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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.

SUPPLEMENTAL APPENDIX

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TABLE OF CONTENTS

Proceedings Before the South Carolina Public Service Commission, Dkt. No. 2026-158-E

CCSC's Petition for Declaratory Order, Petition for Rule to Show Cause Order, Request for Expedited Relief, June 22, 2026 001

Valara's Motion to Dismiss the Petition, July 27, 2026 018

CCSC's Response to Valara's Motion to Dismiss the Petition, August 3, 2026 054

Public Service Commission Directive Granting Motion to Dismiss, August 27, 2026 090

Public Service Commission Order Granting Motion to Dismiss, September 14, 2026 092

CCSC's Petition for Reconsideration and/or Rehearing, September 24, 2026 116

Valara's Response to CCSC's Petition for Reconsideration and/or Rehearing, October 2, 2026 137

Public Service Commission Directive Denying Petition for Reconsideration and/or Rehearing, October 8, 2026 153

Order Denying Reconsideration and Rehearing, October 23, 2026 155

Opposition to Motion for Preliminary Injunction

Valara's Opposition to Plaintiff's Motion for Preliminary Injunction, September 14, 2026 166

Affidavit of Mark Johnson with Exhibits 214

Affidavit of Lisa Amador, P.E. with Exhibits 465

Spartanburg County's Opposition to Plaintiff's Motion for Preliminary Injunction, September 14, 2026 503

Affidavit of Laurie Oakman 523

Affidavit of Travis Brown with Exhibits 526

Spartanburg County Moratorium

Spartanburg County, S.C., Ordinance No. O-26-26, September 21, 2026 538

Notices of Appeal

Notice of Appeal from Circuit Court Order, Dkt. No. 2026-002323, October 20, 2026 542

Notice of Appeal from Public Service Commission Orders, October 30, 2026 546

ELECTRONICALLY FILED - 2026 June 22 11:40 AM - SCPSC - Docket # 2026-158-E - Page 1 of 17

BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2026-158-E

Concerned Citizens of Spartanburg County and Southern Alliance for Clean Energy, Petitioners, v. Valara Holdings, LLC, Respondent.	)	**PETITION FOR DECLARATORY ORDER, PETITION FOR RULE TO SHOW CAUSE ORDER, REQUEST FOR EXPEDITED RELIEF**

Concerned Citizens of Spartanburg County and the Southern Alliance for Clean Energy file these petitions because Valara Holdings, LLC, is actively constructing a large data center and 450-megawatt gas-fired power plant in Spartanburg County in violation of the clear requirements of South Carolina law. By failing to comply with South Carolina law, Valara is evading the transparency required by law and failing to disclose important information to the public and to this Commission. Valara's power plant will be a significant source of harmful air pollution in Spartanburg County, including carcinogenic formaldehyde pollution. An order from this Commission is essential to require Valara to obey the law, to require Valara to inform the public and this Commission what it is doing, and to protect the public, air, and environment of the surrounding communities, Spartanburg County, and South Carolina.

Pursuant to S.C. Code Ann. Regs. 103-825 and other applicable law, Concerned Citizens of Spartanburg County ("Concerned Citizens") and Southern Alliance for Clean

ELECTRONICALLY FILED - 2026 June 22 11:40 AM - SCPSC - Docket # 2026-158-E - Page 2 of 17

Energy ("SACE") (collectively, "Petitioners") respectfully request that the Public Service Commission of South Carolina ("Commission") issue a declaratory order finding that the 450-megawatt ("MW") electric generating plant (the "Power Plant") proposed by Valara at 4000 South Pine Street Spartanburg, South Carolina 29302 (the "Site") to power the Valara data center (the "Data Center") constitutes a "major utility facility" as defined by the S.C. Utility Facility Siting and Environmental Protection Act ("Siting Act"), S.C. Code Ann. § 58-33-20(2)(a), and as such, requires a certificate of environmental compatibility and public convenience and necessity ("CECPCN") before Valara can lawfully continue construction at the Site.

Pursuant to S.C. Code Ann. Regs. 103-825, Petitioners further petition the Commission for a Rule to Show Cause Order requiring Valara to appear and explain why it should not cease ongoing construction at the Site pending the outcome of Petitioners' declaratory order proceeding and any subsequent Siting Act proceeding. Petitioners seek expedited relief as to their Petition for a Rule to Show Cause given that construction is already proceeding at the Site.

I. DISCLOSURE OF PETITIONERS' INTERESTS

1. Concerned Citizens of Spartanburg County is an association of individuals living and owning property near the proposed Data Center and Power Plant in Spartanburg, South Carolina. Affidavit of Mark Felk at ¶ 11–12.

2. Concerned Citizens' mission is "to protect the health, safety, property, environment, and quality of life of the citizens of Spartanburg County from the proposed Valara Data Center." *Id.* at ¶ 12. Concerned Citizens seeks to achieve this mission by "preventing harm to the environment, health, safety, and surrounding communities from

ELECTRONICALLY FILED - 2026 June 22 11:40 AM - SCPSC - Docket # 2026-158-E - Page 3 of 17

the proposed data center," "requiring Valara to thoroughly disclose the environmental impact, negative health consequences and energy requirements of their proposal," and "requir[ing] Valara to halt operation of the data center and power plant." *Id.* at ¶ 13.

3. Members of Concerned Citizens include, among other individuals, Mark Felk, Ricky Heath, and Kip Darwin. *See generally, e.g.*, Affidavit of Mark Felk; Affidavit of Ricky Heath; Affidavit of William Darwin. In order to ensure the Commission appreciates the severity of the situation, we detail below some of the concerns expressed by those who live and own homes near the proposed Data Center and Power Plant.

4. Mr. Felk and his wife reside and own a home at 1005 Oak Creek Drive, just 1500 feet from the Site where the proposed Data Center and Power Plant are being constructed. Affidavit of Mark Felk at ¶¶ 2, 5. Mr. Felk is deeply concerned about the Data Center and Power Plant proposal and ongoing construction at the Site. Mr. Felk has lived at his home since 1995 and has always enjoyed the peace and solace he experiences there. Affidavit of Mark Felk at ¶ 5. Unfortunately, his once-dream home has now become a nightmare due to ongoing construction of the Data Center and Power Plant, and the eventual operation of these facilities. *Id.* at ¶ 4.

5. Mr. Felk is harmed by the lack of transparency surrounding the proposal because he is not able to understand the full scope of what is being proposed and the full scope of harmful impacts. *Id.* at ¶¶ 10, 19. Not knowing this information causes Mr. Felk significant concern and takes away from his peace and solace. *Id.* at ¶ 23. Mr. Felk is also being harmed from the tree clearing, noise, dust, and traffic caused by ongoing construction at the Site, *id.* at ¶¶ 15–18, and will be harmed by the significant air pollution from future operation of the Power Plant, *id.* at ¶ 21.

ELECTRONICALLY FILED - 2026 June 22 11:40 AM - SCPSC - Docket # 2026-158-E - Page 4 of 17

6. Mr. Heath and his wife reside and own a home at 1009 Oak Creek Drive, also across South Pine Street from the Data Center and Power Plant and, like Mr. Felk, he is already being impacted by ongoing construction at the Site and is worried about the host of environmental, health, and community impacts that the Data Center and Power Plant will bring. Affidavit of Ricky Heath at ¶¶ 2, 10–13.

7. Mr. Heath has lived in Spartanburg, and at his home near the Site, for over twenty years. *Id.* at ¶ 2. Mr. Heath first learned about the proposed Data Center in 2025. *Id.* at ¶ 4. He didn't come to understand the full scope of the proposal—particularly, the 450 megawatts of onsite power generation—until earlier this year in 2026. *Id.* at ¶ 6.

8. Mr. Heath is currently being harmed by ongoing construction on the Site, specifically, the tree clearing and loss of wildlife habitat that is occurring and which he has historically valued about the Site. *Id.* at ¶ 10. Mr. Heath can also hear construction noise from the Site at times, particularly when it is otherwise very quiet around his home. *Id.* at ¶ 12. In addition to the harm Mr. Heath is experiencing from the construction, he is deeply concerned about how operation of the Data Center and Power Plant will impact him and the lack of transparency surrounding the proposal. *Id.* at ¶¶ 13, 21. Mr. Heath is very concerned by the harm he will experience from the air pollution and noise pollution during operation of the Power Plant and Data Center, and the water use required by the Data Center and Power Plant. *Id.* at ¶¶ 15–20.

9. Mr. Darwin owns a home and resides with his family at 3 Matchlock Commons in a neighborhood across South Pine Street from the Data Center and Power Plant. Affidavit of William Darwin at ¶ 2. Like Mr. Felk and Mr. Heath, Mr. Darwin is deeply troubled by the impact the Data Center and Power Plant will have on his use and

ELECTRONICALLY FILED - 2026 June 22 11:40 AM - SCPSC - Docket # 2026-158-E - Page 5 of 17

enjoyment of his property and his quality of life. *See generally* Affidavit of William Darwin.

10. Mr. Darwin has lived in Spartanburg his entire life, with the exception of the three years he spent in Columbia during law school. *Id.* at ¶ 3. Mr. Darwin has lived in his current home since 2004. *Id.* at ¶ 2. Mr. Darwin is very concerned about how construction and operation of the Power Plant will harm him and his use and enjoyment of his home. *Id.* at ¶¶ 10–11. He is concerned that the noise pollution and air pollution from operation of the Power Plant will harm his health, his family's health, and his quality of life. *Id.* at ¶ 11. Mr. Darwin is also harmed by the lack of transparency surrounding the facility and the fact that the public has not been adequately informed about the full scale of the Data Center and Power Plant, or the full scope of impacts these facilities will have on the surrounding neighborhoods. *Id.* at ¶ 12–14.

11. For these reasons, Concerned Citizens of Spartanburg County and its members have a significant interest in ensuring the Data Center and Power Plant comply with all applicable local, state, and federal law, including the Siting Act, and that Valara does not continue to proceed with construction without these necessary approvals. If Valara were required to halt construction pending the outcome of Petitioners' Declaratory Order Petition and were required to receive Commission approval under the Siting Act, many of Concerned Citizens' members' harms would be addressed. *See* Affidavit of Mark Felk at ¶¶ 27–29, Affidavit of Ricky Heath at ¶¶ 23–26, Affidavit of William Darwin at ¶¶ 15–18.

12. The Southern Alliance for Clean Energy is a non-profit organization whose mission is to promote responsible and equitable energy choices for clean, safe, and healthy communities throughout the Southeast. SACE has members across South Carolina who

ELECTRONICALLY FILED - 2026 June 22 11:40 AM - SCPSC - Docket # 2026-158-E - Page 6 of 17

have an interest in ensuring that electric generating plants like those planned at the Valara Data Center comply with the environmental review required under the Siting Act. SACE also has a member who, like Mr. Felk, Mr. Heath, and Mr. Darwin, lives very near to the Data Center and Power Plant and will thus be directly affected by the proposal.

13. SACE's principal address is P.O. Box 1842, Knoxville, Tennessee 37901. SACE also has in-state staff in South Carolina.

II. THE SUBJECT OF THE PETITIONS

14. Valara is currently constructing a massive data center in Spartanburg County, South Carolina. To power this data center, Valara proposes to build a 450-MW electric generating plant—a capacity equal to other utility-owned gas plants in South Carolina and well above the 75-MW threshold triggering compliance with the Siting Act (six times the threshold, in fact). Valara's Power Plant will be made up of a combination of gas-fired generators and gas-fired turbines.

15. The Siting Act mandates that "*[n]o person* shall commence to construct a major utility facility without first having obtained a certificate issued with respect to such facility by the commission." S.C. Code Ann. § 58-33-110(1) (emphasis added). A major utility facility is defined as an "electric generating plant and associated facilities designed for, or capable of, operation at a capacity of more than seventy-five megawatts," § 58-33-20(2)(a), and "commence to construct" means "any clearing of land, excavation, or other action that would adversely affect the natural environment of the site or route of a major utility facility." *Id.* § 58-33-20(3).

16. Despite the Siting Act requiring approval of electric generating plants that exceed 75 MW *before* construction commences on such plants, Valara has not submitted

ELECTRONICALLY FILED - 2026 June 22 11:40 AM - SCPSC - Docket # 2026-158-E - Page 7 of 17

any application for Siting Act approval, even while it proceeds with construction at a rapid pace.

17. Based on information provided by Concerned Citizens, whose members live adjacent to and near the Data Center and Power Plant, Valara is proceeding with significant clearing and grading activities on the Site—activities expressly prohibited under the Siting Act prior to receipt of a CECPCN from the Commission. S.C. Code Ann. § 58-33-110(1); *see, e.g.* Affidavit of Mark Felk at ¶ 15 (describing clearing at the Site).

18. According to South Carolina Department of Environmental Services ("DES") emails obtained through the Freedom of Information Act, construction on the Power Plant began in March 2026. *See* Attachment 1 (April 2026 email exchange between DES and Post & Courier reporter where DES states "construction of the engines approved by last air permit [ ] began last month").

19. As large-scale data centers continue to locate in South Carolina and as data center developers and companies increasingly begin to build utility-scale electric generating facilities to power their data centers, a declaratory order confirming the applicability of the Siting Act to these electric generating facilities is of critical importance.

III. LEGAL BACKGROUND

20. The core purpose of the Siting Act, which was first enacted in 1971, is to require pre-construction review of major utility facilities to ensure that the need for those facilities is balanced against their environmental impacts. S.C. Code Ann. § 58-33-160(1). As such, the Siting Act, S.C. Code Ann. § 58-33-10 *et seq.*, provides that no person shall commence to construct a "major utility facility" without first receiving a CECPCN from the Commission. S.C. Code Ann. § 58-33-110(1).

ELECTRONICALLY FILED - 2026 June 22 11:40 AM - SCPSC - Docket # 2026-158-E - Page 8 of 17

21. The term "person" means "any individual, group, firm, partnership, corporation, cooperative, association, government subdivision, government agency, local government, municipality, any other organization, or any combination of any of the foregoing, and shall include the South Carolina Public Service Authority." S.C. Code Ann. § 58 33-20(5).

22. The term "commence to construct" means any "clearing of land, excavation, or other action that would adversely affect the natural environment of the site." S.C. Code Ann. § 58 33-20(3).

23. A "major utility facility" is defined to include any electric generating plant and associated facilities "designed for, or capable of, operation at a capacity of more than seventy-five megawatts." *Id*. § 58-33- 20(2).

24. An applicant for a certificate is required to file an application with the Commission that contains: (i) a description of the location and of the major utility facility to be built; (ii) a summary of any studies which have been made by or for the applicant of the environmental impact of the major utility facility; (iii) a statement explaining the need for the major utility facility; and (iv) any other information the applicant may consider relevant or as the commission may by regulation or order require. S.C. Code Ann. § 58-33-110 (10).

25. In seeking a certificate, the applicant must provide credible information demonstrating that the facility to be built has been compared to other generation options in terms of cost, reliability, schedule constraints, fuel cost and availability, transmission constraints and costs, ancillary services capabilities, current and reasonably expected future environmental costs and restrictions, that the facility supports system efficiency and

ELECTRONICALLY FILED - 2026 June 22 11:40 AM - SCPSC - Docket # 2026-158-E - Page 9 of 17

reliability in light of those considerations, and any other regulatory implications deemed legally or reasonably necessary for consideration by the Commission. S.C. Code Ann. § 58-33-110 (8)(a).

26. Prior to granting a CECPCN, the Commission must find and determine: the need for the facility, the probable environmental impact, whether that impact is justified in light of alternative technologies and other relevant considerations, whether the facility will serve the interests of "system economy and reliability," whether there is reasonable compliance with applicable state and local laws and, finally, "that public convenience and necessity require the construction of the facility." S.C. Code Ann. § 58-33-160(1). The Siting Act also requires the Commission to ensure that certain notice, hearing, and procedural requirements are met, including requiring notice to persons residing in municipalities where any portion of the major utility facility is to be located. S.C. Code Ann. §§ 58-33-120(2)-(4) (notice), 58-33-130 (hearings), 58-33-140 (required parties), 58-33-150 (record requirements).

27. The Office of Regulatory Staff, the Department of Environmental Services, the Department of Natural Resources, and the Department of Parks, Recreation and Tourism are statutory parties to Siting Act proceedings. S.C. Code Ann. § 58-33-140(1).

28. Siting Act review is a critical step in the regulatory process for construction of a major electric generating plant, as it requires an applicant to provide public notice to affected communities, undertake a full examination of the facility's environmental impacts and available alternatives, and demonstrate the legal compliance of its proposal.

IV. STATEMENT OF FACTS AND DISCUSSION

a. The Valara Data Center and Power Plant

ELECTRONICALLY FILED - 2026 June 22 11:40 AM - SCPSC - Docket # 2026-158-E - Page 10 of 17

29. Upon information and belief, the public at large first learned of Valara's Data Center in early 2025 when the Post and Courier reported that Spartanburg County Council had held an initial reading and vote to approve a tax break for "[a]n undisclosed company," referred to under the code name "Project Moc-1."[1]

30. The Post and Courier further reported that then-Councilman (now Commissioner) David Britt stated that the project was "not a data center"[2] and would "not use more power than the site's existing facility."[3]

31. In April 2025, Spartanburg County approved a fee-in-lieu of tax ("FILOT") agreement for the project.[4]

32. Shortly after receiving this tax break from the County, Valara applied to the South Carolina Department of Environmental Services ("DES") for a Clean Air Act permit authorizing air pollution from approximately 50 MW of onsite power generation.[5]

33. On July 18, 2025, DES issued a public notice announcing a comment period for Valara's draft Clean Air Act permit.[6] In the draft permit, DES explained that "[t]he facility will construct a data center" and "[t]his data center is powered by twenty-four 2103 kW natural gas generators[.]"[7] Just two months later, on September 17, 2025, DES issued a final air permit authorizing construction and operation of the twenty-four 2,103 kW gas-

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[1] Max White, *Spartanburg County Could See a $2.8 Billion Investment, One of the Largest Ever in SC. What to Know*, POST & COURIER (Feb. 18, 2025), https://perma.cc/462Q-QQQD.
[2] Although Valara has referred to the facility as a "high-performance computing center," upon information and belief, there is no meaningful difference between a high-performance computing facility and a data center in terms of potential environmental and community impacts, such as air pollution and noise pollution. "Data center" appears to be the colloquial and publicly familiar term for these facilities and thus this statement misled the public.
[3] White, *supra* note 1.
[4] Christian Boschult, *Spartanburg data center that got tax breaks wants 400 megawatt energy production increase*, POST & COURIER (Apr. 22, 2026), https://perma.cc/5N4H-3H7B.
[5] *Id*.
[6] Dep't of Envt'l Servs., Public Notice: Draft Air Synthetic Minor Construction Permit (July 18, 2025) (Attachment 2).
[7] *Id.*

ELECTRONICALLY FILED - 2026 June 22 11:40 AM - SCPSC - Docket # 2026-158-E - Page 11 of 17

fired generators, totaling approximately 50 MW of power generation, and the associated air pollution.[8]

34. In December, just three months after receiving this initial air permit, Valara contacted DES about a modification to its air permit to authorize air pollution from an additional ***400 MW*** of onsite gas-fired generation at the Site.[9] This represents an eight-fold increase over Valara's original air permit.

35. Upon information and belief, Valara's plan to construct a total of 450 MW of onsite generation was never disclosed to the public.

36. Upon information and belief, the general public was first made aware of this massive Power Plant proposal in April 2026, when the Post and Courier published an article about the permit modification request.[10]

37. A 450-MW Power Plant far exceeds the Siting Act's 75-MW threshold, and it is comparable to or even larger in size than various power plants owned by regulated utilities in South Carolina which underwent Siting Act review.[11]

38. According to the draft permit DES issued for Valara's 450-MW electric generating plant, the Power Plant's onsite generation will emit approximately 220 tons per year ("TPY") of Nitrogen Oxides ("NOx"), 201 TPY of Carbon Monoxide ("CO"), 158 TPY of Particulate Matter ("$PM_{2.5}$"), 9.5 TPY of Sulfur Dioxide ("SO_2"), 60 TPY of

[8] Dep't of Envt'l Servs., Draft Statement of Basis 1 (Attachment 3).
[9] Boschult, *supra* note 4.
[10] *Id.*
[11] *See, e.g.* S.C. Pub. Serv. Comm'n Docket No. 1991-606-E, Order No. 92-275, https://dms.psc.sc.gov/Attachments/Order/92c819e5-d2fa-c8c4-aa424efc60603a1c (approving a 385 MW coal plant in Cope); S.C. Pub. Serv. Comm'n Docket No. 2001-77-E, Order No. 2001-666, https://dms.psc.sc.gov/Attachments/Order/2090b80c-faa1-60e9-05d918cedb51b6f2 (approving a 640 MW combustion turbine proposed by Duke Power in Cherokee County); S.C. Pub. Serv. Comm'n Docket No. 2024-264-E, Order No. 2025-137, https://dms.psc.sc.gov/Attachments/Order/cbd2a906-338e-448d-b3b9-c2ab69a63097 (approving a 178 MW expansion at Santee Cooper's Rainey facility).

ELECTRONICALLY FILED - 2026 June 22 11:40 AM - SCPSC - Docket # 2026-158-E - Page 12 of 17

Volatile Organic Compounds ("VOC"), and 19 TPY of Hazardous Air Pollutants ("HAPs"), including 9.40 TPY of formaldehyde.[12]

39. Upon information and belief, these estimates, if correct, mean the Power Plant could be the largest industrial source of NOx, CO, $PM_{2.5}$, SO_2, and formaldehyde in Spartanburg County based on a comparison to the U.S. Environmental Protection Agency's 2020 National Emissions Inventory ("NEI") Data.[13] It could also be a top ten source of particulate matter pollution in the entire state—far exceeding the last reported emissions of the former Kohler facility that operated on the Site, also according to the U.S. Environmental Protection Agency's 2020 NEI Data.[14]

40. Formaldehyde is a known human carcinogen;[15] particulate matter pollution can increase the risk of hospitalizations due to heart attack, pneumonia, cardiovascular issues, or, in some cases, stroke or cancer; [16] and NOx can worsen ground-level ozone, better known as smog, and is associated with respiratory health effects.[17]

41. Upon information and belief, in addition to the air pollution the Power Plant will emit into the surrounding neighborhoods, the Power Plant will operate 24/7, producing noise pollution.

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[12] Dep't of Envt'l Servs., Draft Statement of Basis at 6–7 (Attachment 3).
[13] *See* EPA, 2020 National Emissions Inventory Data Retrieval Tool (select "Facility Data," then select "South Carolina" under "State," "SC-Spartanburg County" under "State-County," and "Nitrogen Oxides," "Carbon Monoxide," "PM2.5 Primary (Filt + Cond)," "Sulfur Dioxide," and "Formaldehyde" under "Pollutant").
[14] *See* EPA, 2020 National Emissions Inventory Data Retrieval Tool (select "Facility Data," then select "South Carolina" under "State," select "PM2.5 Primary (Filt + Cond) under "Pollutant"); *see also* EPA, 2020 National Emissions Inventory Data Retrieval Tool (select "Facility Data," then select "South Carolina" under "State," "SC-Spartanburg County" under "State-County," and "2851 Southport Road" under "Street Address") (listing $PM_{2.5}$ emissions from Kohler facility formerly at the Site as approximately 3 TPY).
[15] EPA, Integrated Risk Information System Toxicological Review of Formaldehyde (Inhalation), at 2 (Aug. 2024), https://perma.cc/3HAQ-T88S.
[16] EPA, Particulate Matter (PM) Basics, https://perma.cc/68EU-3FH3.
[17] EPA, Basic Information about NO_2, https://perma.cc/MNL6-BQMV.

ELECTRONICALLY FILED - 2026 June 22 11:40 AM - SCPSC - Docket # 2026-158-E - Page 13 of 17

42. The Valara Data Center has been plagued with significant transparency failures from the start. Upon information and belief, the general public, including the impacted communities around the proposed Data Center and Power Plant, was never informed about the proposal's true nature, scale, and impact, resulting in widespread public outrage when this information came to light. Impacted community members reasonably feel misled. Affidavit of Mark Felk at ¶ 9; Affidavit of Ricky Heath at ¶ 6; Affidavit of William Darwin at ¶ 14.

43. All the while, Valara has been moving forward with construction at a rapid pace, including conducting extensive land-clearing activities at the Site and construction of the electric generating plant. *See* Affidavit of Mark Felk at ¶ 15, Attachment 1 (DES email describing ongoing construction of engines). These actions are taking place without any Commission approval.

b. The Siting Act Requires Valara to Cease Construction and Apply for a CECPCN.

44. The plain language of the Siting Act prohibits any "person" from commencing construction on a "major utility facility" without first obtaining a CECPCN from the Commission. Section 58-33-20(2) defines a major utility facility as any electric generating plant capable of operating at a capacity of more than 75 MW.

45. Valara is a "person," defined as "any individual, group, firm, partnership, corporation, cooperative, association, government subdivision, government agency, local

ELECTRONICALLY FILED - 2026 June 22 11:40 AM - SCPSC - Docket # 2026-158-E - Page 14 of 17

government, municipality, any other organization, or any combination of any of the foregoing," S.C Code Ann. § 58-33-20(5).

46. Valara's Power Plant is an electric generating plant capable of operating at a capacity of more than 75 MW.

47. Valara is "commencing construction," including "clearing" and "excavation," which are "adversely affect[ing] the natural environment of the site," § 58-33-20(3).

48. Despite moving forward with construction, Valara has neither applied for nor received a CECPCN from the Commission.

49. Valara is thus in violation of the Siting Act.

50. For these reasons, Petitioners seek a declaration from the Commission that Valara's electric generating plant requires a CECPCN under the Siting Act.

51. Moreover, the further Valara progresses with construction at the Site, the greater the risk becomes that the Commission's ability to conduct the required assessment of the proposed Power Plant under the Siting Act will be curtailed. Indeed, as construction progresses, Valara may contend that alternatives have been eliminated or have become increasingly unreasonable to implement, and the environmental harms that the Commission is charged with considering will become realized without adequate oversight or review.

52. Indeed, the entire purpose of a prohibition on commencing construction prior to receiving a CECPCN from the Commission is to preserve the Commission's ability to meaningfully implement the Siting Act's requirements and review the proposal.

ELECTRONICALLY FILED - 2026 June 22 11:40 AM - SCPSC - Docket # 2026-158-E - Page 15 of 17

53. For these reasons, Petitioners seek an Order for a Rule to Show Cause requiring Valara to appear and explain why it should not cease ongoing construction at the Site pending the outcome of Petitioners' declaratory order proceeding and any subsequent Siting Act proceeding.

V. NOTICES OF APPEARANCE

54. Petitioners' authorized representatives in this proceeding to whom all notices, pleadings, correspondence, and other documents relating to this proceeding should be directed are:

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55. Petitioners consent to electronic service in this proceeding.

VI. REQUEST FOR EXPEDITED RELIEF

56. As noted above, Valara has already commenced construction at the Site. This includes the "clearing of land" and "excavation" which "adversely affect[s] the natural

ELECTRONICALLY FILED - 2026 June 22 11:40 AM - SCPSC - Docket # 2026-158-E - Page 16 of 17

environment of the site." S.C. Code § 58-33-20(3).

57. Accordingly, Petitioners respectfully request that the Commission consider and rule on Petitioners' Petition for a Rule to Show Cause Order in an expeditious manner to ensure further destructive and unlawful construction activities do not continue unabated.

WHEREFORE, for the foregoing reasons, Petitioners respectfully request that the Commission grant the following relief.

1. On an expedited basis, issue an Order for a Rule to Show Cause requiring Valara to appear and explain why it should cease ongoing construction at the Site pending the outcome of Petitioners' declaratory order proceeding and any subsequent Siting Act proceeding;
2. Issue a Declaratory Order finding that Valara's proposed Power Plant is a "major utility facility" within the meaning of the Siting Act because it is an electric generating plant capable of operating at a capacity of over 75 MW and therefore must comply with the Act's CECPCN requirements and the Act's prohibition on commencing construction without a CECPCN;
3. Pursuant to S.C. Code Regs. Ann. 103–830, cause a copy of Petitioners' Petition for a Declaratory Order and Petition for a Rule to Show Cause Order to be served upon Valara Holdings, LLC at the following address: Corporation Service Company, 100 Coastal Drive, Suite 210, Charleston, SC 29492; and
4. Grant any other relief that the Commission deems just and proper.

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ELECTRONICALLY FILED - 2026 June 22 11:40 AM - SCPSC - Docket # 2026-158-E - Page 17 of 17

ELECTRONICALLY FILED - 2026 July 27 4:03 PM - SCPSC - Docket # 2026-158-E - Page 1 of 36

BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2026-158-E

Concerned Citizens of Spartanburg County and Southern Alliance for Clean Energy,	)	
***Petitioners*,**	)	
v.	)	**VALARA HOLDINGS LLC'S MOTION TO DISMISS THE PETITION**
Valara Holdings LLC,	)	
***Respondent*.**	)	

ELECTRONICALLY FILED - 2026 July 27 4:03 PM - SCPSC - Docket # 2026-158-E - Page 2 of 36

TABLE OF CONTENTS

Page

INTRODUCTION 1

BACKGROUND 4

A. Relevant Factual Background 4

B. Procedural Background 7

LEGAL STANDARD 9

ARGUMENT 10

I. The Commission Has No Jurisdiction Over a Facility That Generates Electricity Solely for Its Own Use 10

A. Title 58 Limits the Commission's Jurisdiction to Public Utilities 10

B. Section 58-33-110 Does Not Expand the Commission's Jurisdiction to Reach Private Self-Generators 13

C. If the Utility Siting Act Already Covered Self-Generating Data Centers, the Legislature Would Not Be Trying to Pass Laws That Do 20

D. Persuasive Authority from Comparable Statutes Supports Valara's Position 23

II. Chapter 33 Creates No Private Enforcement Mechanism for Petitioners 24

ELECTRONICALLY FILED - 2026 July 27 4:03 PM - SCPSC - Docket # 2026-158-E - Page 3 of 36

TABLE OF AUTHORITIES

Page(s)

Cases

Alexander v. Sandoval,
532 U.S. 275 (2001).....26

In re Amazon Data Servs.,
Docket No. PT-7151/CN-24-435 (Minn. Pub. Utils. Comm'n Apr. 1, 2025).....23

Amisub of S.C., Inc. v. S.C. Dep't of Health & Env't Control,
403 S.C. 576, 743 S.E.2d 786 (2013).....27

In re: Application of Kiawah Island Utility, Inc.,
Docket No. 96-168-W/S, Order No. 2000-927 (Nov. 13, 2000).....12

In re: Application of Kingstree East 230 LLC,
Docket No. 2024-203-E, Order No. 2025-124 (Feb. 20, 2025).....15

In re: Application of SR Lambert I LLC,
Docket No. 2022-97-E, Order No. 2022-712(A) (Feb. 4, 2026).....15

Arkansas Charcoal Co. v. Arkansas Pub. Serv. Comm'n,
299 Ark. 359, 773 S.W.2d 427 (1989).....14, 23

Black River Elec. Coop., Inc. v. Public Service Comm'n,
238 S.C. 282, 120 S.E.2d 6 (1961).....10, 24

Blue Cross & Blue Shield v. S.C. Indus. Comm'n,
274 S.C. 204, 262 S.E.2d 35 (1980).....24

In re Blue Granite Water Co.,
434 S.C. 180, 862 S.E.2d 887 (2021).....9

Byrd v. Irmo High Sch.,
321 S.C. 426, 468 S.E.2d 861 (1996).....26

City of Camden v. Fairfield Elec. Co-op, Inc.,
372 S.C. 543, 643 S.E.2d 687 (2007).....20, 22

Dema v. Tenet Physician Servs.-Hilton Head, Inc.,
383 S.C. 115, 678 S.E.2d 430 (2009).....10

Doe v. Marion,
373 S.C. 390, 645 S.E.2d 245 (2007).....26

ELECTRONICALLY FILED - 2026 July 27 4:03 PM - SCPSC - Docket # 2026-158-E - Page 4 of 36

Dorman v. Aiken Commc'ns, Inc.,
303 S.C. 63, 398 S.E.2d 687 (1990) 25

Duke Energy Corp. v. S.C. Dep't of Revenue,
415 S.C. 351, 785 S.E.2d 590 (2016) 3, 14

Hodges v. Rainey,
341 S.C. 79, 533 S.E.2d 578 (2000) 16

In Re: Sarah Zito; Alvaro Sarmiento, Jr.; Mark Shinn; and Daniel Bermudez, v. Strata Audubon, LLC and Strata Veridian, LLC,
Docket No. 2022-84-WS, Order No. 2022-503, 2022 WL 3098732 (S.C.P.S.C.).....9, 12

Key Corp. Cap. Inc. v. Cnty. of Beaufort,
373 S.C. 55, 644 S.E.2d 675 (2007) 20

Kiawah Prop. Owners Grp. v. Pub. Serv. Comm'n of South Carolina,
357 S.C. 232, 593 S.E.2d 148 (2004) 12

Lancaster Cnty. Bar Ass'n v. S.C. Comm'n on Indigent Def.,
380 S.C. 219, 670 S.E.2d 371 (S.C. 2008) 16

Lindsay v. S. Farm Bureau Cas. Ins. Co.,
258 S.C. 272, 188 S.E.2d 374 (1972) 14

In re: Michael Madden v. Charter Spectrum,
Docket No. 2020-224-C, Order No. 2020-718, 2020 WL 7660662 (S.C.P.S.C.) 9, 12, 22

New York Tr. Co. v. Comm'r of Internal Revenue,
68 F.2d 19 (2d Cir. 1933) (Hand, J.).....14

Nichols v. United States,
578 U.S. 104 (2016).....27

NLRB v. Noel Canning,
573 U.S. 513 (2014).....19

In re: Nolas Trading Co. v. BellSouth Telecomms., Inc.,
Docket No. 2008-227-C, Order No. 2008-567, 2008 WL 9903465 (S.C.P.S.C.) 22

Olson v. Fac. House of Carolina, Inc.,
344 S.C. 194, 544 S.E.2d 38 (Ct. App. 2001).....26

Piedmont & N. Ry. Co. v. Scott,
202 S.C. 207, 24 S.E.2d 353 (1943) 10, 20

Pine Gate Renewables, LLC & Catalina Solar, LLC v. Dominion Energy S.C., Inc.,
Order No. 2023-906 (Dec. 28, 2023) 15, 18, 27

Posey v. Proper Mold & Eng'g, Inc.,
378 S.C. 210, 661 S.E.2d 395 (Ct. App. 2008) 9

Pres. Soc'y of Charleston v. S.C. Dep't of Health & Env't Control,
430 S.C. 200, 845 S.E.2d 481 (2020) 24

In Re: Rosia M. Morgan v. Charter Commc'ns., LLC (Spectrum),
Docket No. 2023-372-C, Order No. 2024-134, 2024 WL 755501 (S.C.P.S.C.) 9, 22

S.C. Energy Users Comm. v. S.C. Pub. Serv. Comm'n,
388 S.C. 486, 697 S.E.2d 587 (2010) 27

S.C. State Ports Auth. v. Jasper Cnty.,
368 S.C. 388, 629 S.E.2d 624 (2006) 17

State v. Sweat,
386 S.C. 339, 688 S.E.2d 569 (2010) 16

Vernon v. Harleysville Mut. Cas. Co.,
244 S.C. 152, 135 S.E.2d 841 (1964) 20

Whitworth v. Fast Fare Mkts. of S.C., Inc.,
289 S.C. 418, 338 S.E.2d 155 (1985) 25

Statutes

Arkansas Code of Annotated Regulations § 23–18–501 *et seq.* 23

Minnesota Statute § 216B.24, Subd. 2 24

Minnesota Statute § 216B.243, Subd. 2 23

Ohio Revised Code Ann. § 4906.03 23

S.C. Utility Facility Siting and Environmental Protection Act 8

South Carolina Code of Annotated Regulations § 58-3 (Chapter 3) 11

South Carolina Code of Annotated Regulations § 58-3-140(A) 2, 11, 12

South Carolina Code of Annotated Regulations § 58-5-10 *et seq.* Chapter 5 12

South Carolina Code of Annotated Regulations § 58-9-10 *et seq.* Chapter 9 12

South Carolina Code of Annotated Regulations § 58-11-10 *et seq.* Chapter 11 12

ELECTRONICALLY FILED - 2026 July 27 4:03 PM - SCPSC - Docket # 2026-158-E - Page 5 of 36

South Carolina Code of Annotated Regulations § 58-15-10 *et seq.* Chapter 15 12

South Carolina Code of Annotated Regulations § 58-27 (Chapter 27) 11, 16, 17, 26

South Carolina Code of Annotated Regulations § 58-27-10(7).....2, 11, 13, 16

South Carolina Code of Annotated Regulations § 58-27-1940 25

South Carolina Code of Annotated Regulations, § 58-33 (Chapter 33) ..... *passim*

South Carolina Code of Annotated Regulations, § 58-33-10 *et seq.* Utility Facility Siting and Environmental Protection Act ("the Utility Siting Act")..... *passim*

South Carolina Code of Annotated Regulations, § 58-33-20 .....8, 14

South Carolina Code of Annotated Regulations § 58-33-110 .....13, 15

South Carolina Code of Annotated Regulations § 58-33-120 25

South Carolina Code of Annotated Regulations § 58-33-130 25

South Carolina Code of Annotated Regulations § 58-33-140(1)(a)-(d) 3, 25

South Carolina Code of Annotated Regulations § 58-33-160 .....15, 16, 25

South Carolina Code of Annotated Regulations, § 58-33-320 .....25, 26, 27

South Carolina Code of Annotated Regulations, § 58-33-410 16

South Carolina Code of Annotated Regulations § 103-301(1).....16, 17

South Carolina Code of Annotated Regulations § 103-302(3).....16, 18

South Carolina Code of Annotated Regulations § 103-302(5).....17

South Carolina Code of Annotated Regulations § 103-302(6).....11, 18

South Carolina Code of Annotated Regulations § 103-304(2).....16, 17, 18

South Carolina Code of Annotated Regulations § 103-825.....26

Rules

South Carolina Rules of Civil Procedure Rule 12(b)(1).....9

ELECTRONICALLY FILED - 2026 July 27 4:03 PM - SCPSC - Docket # 2026-158-E - Page 6 of 36

Other Authorities

Brief in Support of Proposed Order, Aug. 22, 2023, Docket No. 2023-38-E & 2023-39-E 13, 19

Commission Docket No. 2026-158-E.....7

Initial Legal Brief of the South Carolina Coastal Conservation League 12, 14, 15, 18

Order No. 2023-906.....15, 18, 27

South Carolina Constitutional Art. IX, § 1 11

Southern Environmental Law Center.....18

ELECTRONICALLY FILED - 2026 July 27 4:03 PM - SCPSC - Docket # 2026-158-E - Page 7 of 36

ELECTRONICALLY FILED - 2026 July 27 4:03 PM - SCPSC - Docket # 2026-158-E - Page 8 of 36

PURSUANT TO THE Petition for Declaratory Order, Petition for Rule to Show Cause Order, Request for Expedited Relief filed by Concerned Citizens of Spartanburg County and Southern Alliance for Clean Energy (collectively "Petitioners") in the above-referenced proceeding (the "Petition"), Valara Holdings LLC ("Valara") hereby provides its Motion to Dismiss the Petition. For the reasons set forth below, Valara respectfully requests that the Public Service Commission of South Carolina (the "Commission") dismiss the Petition.[1]

INTRODUCTION

Valara has made a historic investment in the Spartanburg region to construct a state-of-the-art high performance computing center (the "HPCC") that will create hundreds of jobs for South Carolina citizens. One of the largest investments in State history, the project represents an initial capital investment of $2.76 billion, with projected capital commitments exceeding that amount, and is expected to generate substantially more in economic impact for Spartanburg County and the State of South Carolina. Once complete, the facility will solve problems on the cutting edge of physics and mathematics and engage in scientific research and other computational workloads. And it will come equipped with onsite, completely behind-the-meter electricity generation designed to avoid the imposition of additional electricity costs on the public and reduce the strain on the grid infrastructure. Critically, not a single watt of Valara's privately generated power will enter the public grid.

Nevertheless, Petitioners—led by advocacy groups—ask the Public Service Commission to step in. They claim that Valara must obtain a Certificate of Environmental Compatibility and

[1] Pursuant to the Commission's July 16 Order, this proceeding is governed by a two-phased procedural schedule. *See* Docket No. 2026-158-E, (July 16 Order Adopting Procedural Schedule). Phase I addresses threshold jurisdictional issues with oral argument scheduled for August 5, 2026. Phase II, addressing the merits of the Petition, will proceed only if the Commission determines it has jurisdiction following Phase I.

ELECTRONICALLY FILED - 2026 July 27 4:03 PM - SCPSC - Docket # 2026-158-E - Page 9 of 36

Public Convenience and Necessity ("CECPCN") under the Utility Facility Siting and Environmental Protection Act (the "Utility Siting Act"), S.C. Code Ann. §§ 58-33-10 *et seq.*, as though Valara (a private entity with no intentions *or ability* to export electricity to the grid) were just another utility selling electricity to the public. Worse, Petitioners seek to halt construction of the *entire project*—jeopardizing the substantial economic benefits the project will deliver to South Carolina and impairing a business that has followed every regulation required by the county and State.

The Commission should order no such thing. The Petition suffers two threshold jurisdictional deficiencies, each sufficient to warrant dismissal.

First, Petitioners ask the Commission to exercise jurisdiction that the General Assembly has never granted. Under Section 58-3-140(A), the Legislature vested the Commission with jurisdiction over *public utilities*. But Valara is not a public utility. The HPCC will generate electricity solely for its own operations, and Valara will not sell energy to any third parties—indeed it *cannot* transfer its electricity into the public grid. Valara therefore falls squarely within the express exclusion for self-generators contemplated under Section 58-27-10(7).

Petitioners attempt to end run this jurisdictional barrier by pointing to the Utility Siting Act, which establishes a certification process for generation plants in excess of 75 MW. Because the Utility Siting Act applies to a "person" who seeks to create a "major utility facility" (Petitioners contend) the Utility Siting Act enables the Commission to hear disputes regarding private actors. In so arguing, Petitioners suggest that, when the Legislature enacted the certification process over 50 years ago, it quietly buried a provision that overrides the express vesting provision that went undiscovered until now.

ELECTRONICALLY FILED - 2026 July 27 4:03 PM - SCPSC - Docket # 2026-158-E - Page 10 of 36

That position is neither supported by the statute itself nor common law. Statutes must be read as a whole, *Duke Energy Corp. v. S.C. Dep't of Revenue*, 415 S.C. 351, 355, 785 S.E.2d 590, 592 (2016), and doing so here forecloses Petitioners' interpretation. Read in context, Chapter 33 establishes the certification process for facilities *otherwise subject to the Commission's jurisdiction*; it does not independently enlarge that jurisdiction or silently override Title 58's express exclusion of self-generators and thereby sweep an entirely new category of private industrial facilities into Commission regulation merely because they generate electricity for their own use. This conclusion is confirmed at every turn by the Utility Siting Act's plain language, a holistic reading of the statutory regime, the Commission's own regulations and practice, South Carolina precedent, and recent legislative activity—all of which Petitioners ignore in their interpretation.[2]

Second, Petitioners lack statutory authority to initiate this proceeding. Chapter 33 creates no private enforcement mechanism. Instead, the Legislature expressly allowed a third party to *intervene* only in an existing certification proceeding. S.C. Code Ann. § 58-33-140(1)(a)–(d). The intent of this structure is clear: to prohibit enforcement by anyone other than the ORS in a court.

This case is not just about Valara. It is about whether the Commission will, for the first time in the Utility Siting Act's 55-year history, discover within that statute a jurisdiction it has never exercised: authority over privately-owned industrial facilities that neither generate electricity for public use nor participate in South Carolina's public utility system. The statute confers no such jurisdiction. It does not even hint at it. And it certainly does not empower private parties to haul companies before the Commission at will.

[2] Indeed, in the past twelve months, the South Carolina legislature considered a number of ways to grant state agencies authority over data centers *and chose not to enact any of them*. *Infra* 21. The PSC should not read into the existing statute authority that the Legislature declined to provide.

ELECTRONICALLY FILED - 2026 July 27 4:03 PM - SCPSC - Docket # 2026-158-E - Page 11 of 36

For the reasons set forth below, the Commission should dismiss the Petition with prejudice.

BACKGROUND

A. Relevant Factual Background

Valara is an affiliate of NorthMark Compute & Cloud ("NMC^2"), an information technology company and provider of cloud computing solutions and IT services to its affiliated entities.[3] Since 2025, Valara has invested billions of dollars in the Spartanburg region to construct an HPCC on a former Kohler manufacturing industrial site and brownfield site that Valara is remediating, at its own expense.[4] The HPCC will operate as a privately owned industrial computing facility that supports advanced computational workloads, like machine learning, scientific research, simulations, and large-scale data analysis, for Valara, NMC^2, and their affiliates.[5] The project represents an initial capital investment of $2.76 billion, with projected capital commitments exceeding that amount, and is expected to generate substantially more in economic impact for Spartanburg County and the State of South Carolina.[6] The HPCC is expected to create approximately 150 permanent full-time jobs.[7] More than 1,445 construction workers are currently engaged in building the facility.[8]

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3 Affidavit of M. Johnson, at ¶ 1.

4 *Id.* at ¶ 5.

5 *Id.* at ¶ 4.

6 *Id.* at ¶ 6.

7 *Id.* at ¶ 7.

8 *Id.* at ¶ 7.

ELECTRONICALLY FILED - 2026 July 27 4:03 PM - SCPSC - Docket # 2026-158-E - Page 12 of 36

The HPCC is designed to be powered by onsite, behind-the-meter electric generation, intended and designed solely to supply electricity for the HPCC's own operations.[9] At no time has Valara planned, budgeted, or sought regulatory approval for the HPCC to operate as an electric utility, merchant generating facility, or other provider of electric service to nonaffiliated third parties.[10] Consistent with that purpose, the HPCC's generating equipment is not designed, intended, or configured to provide electric service to the public, participate in wholesale or retail electricity markets, or to sell, transmit, distribute, or furnish electricity to any third party.[11] Through this private generation, Valara aims to avoid imposing additional costs on existing ratepayers and straining the public grid infrastructure.[12]

The HPCC will have onsite generating capacity of approximately 457 MW upon full buildout and, consistent with industry practice, is being constructed in two phases. Phase I of permitting and construction involves the installation of an initial set of natural gas-fired reciprocating engines whose combined generating capacity will not exceed 75 MW.[13] Each of the generators is equipped with selective catalytic reduction systems for NOx control and oxidation catalysts for CO, VOC, formaldehyde, and other hazardous air pollutants.[14] On September 17, 2025, the South Carolina Department of Environmental Services ("DES") granted Valara a permit

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[9] Affidavit of M. Johnson, at ¶ 8; Attachment 3 to Petition (03/04/2026 Statement of Basis, CP-50000422 v1.0, hereinafter "03/04/2026 Statement of Basis") at 1.

[10] Affidavit of M. Johnson, at ¶ 8.

[11] *Id.* at ¶ 9; 03/04/2026 Statement of Basis at 1.

[12] Affidavit of M. Johnson, at ¶ 9.

[13] Ex. 1 (Bureau of Air Quality Synthetic Minor Construction Permit, CP-50000316 v1.1), at 1–3.

[14] Ex. 1, at 3.

ELECTRONICALLY FILED - 2026 July 27 4:03 PM - SCPSC - Docket # 2026-158-E - Page 13 of 36

to begin construction.[15] Phase II of permitting and construction involves the installation of additional onsite generating equipment, including additional gas turbines with varying megawatt capacities.[16] Valara has submitted a separate permit application for that future equipment, which remains subject to DES's permitting process.[17] The Company has contracted with a third-party commissioning agent to conduct a multi-stage commissioning process to ensure that all equipment is built, installed, and operating in compliance with original equipment manufacturer specifications, safety and environmental regulations, and operational standards.[18]

Regardless of the phase, the HPCC will not—and physically cannot—provide electric service to the public, participate in wholesale or retail electricity markets, or furnish electricity to any third party.[19] The HPCC's generating control system is configured to operate in load-following mode.[20] Under that mode, the generators produce only the amount of electricity required to meet the HPCC's fluid electrical demand.[21] As the HPCC's electrical demand increases or decreases, the generators' output correspondingly increases or decreases.[22]

The HPCC's generators do not contribute power to Duke Energy's electric system.[23] The HPCC remains interconnected with Duke Energy through the existing institutional substation that

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15 Ex. 1, at 1, 3.

16 03/04/2026 Statement of Basis at 1.

17 03/04/2026 Statement of Basis at 15.

18 Affidavit of M. Johnson, at ¶ 12.

19 Affidavit of M. Johnson, at ¶ 13.

20 *Id.* at ¶ 13.

21 *Id.* at ¶ 13.

22 *Id.* at ¶ 13.

23 *Id.* at ¶ 14.

ELECTRONICALLY FILED - 2026 July 27 4:03 PM - SCPSC - Docket # 2026-158-E - Page 14 of 36

previously served the former Kohler manufacturing facility.[24] That interconnection permits the HPCC to purchase approximately 13 MW of electricity from Duke Energy, as needed, to support facility operations.[25] But the interconnection is configured for import-only service through a break-before-make transfer scheme.[26] Under that configuration, the HPCC disconnects from Duke Energy's system before connecting to onsite generation and disconnects from onsite generation before reconnecting to Duke Energy.[27] Because of this configuration, electricity generated onsite mechanically cannot be exported to the grid.[28]

Nor is the constraint one-sided: Duke Energy's own substation and radial feed serving the property are not configured for export to the public grid, and exceeding the current 13 MW interconnection capacity would require material and expensive upgrades on both sides of the meter.[29] This would include not only a redesign of the HPCC's own equipment subject to Duke's own multi-year procurement queue, but also an upgrade to Duke Energy's own substation, which is Duke-owned equipment on Duke property.[30]

B. Procedural Background

Petitioners filed the Petition on June 22, 2026, in Commission Docket No. 2026-158-E. The Petition requests that the Commission issue:

> [A] declaratory order finding that the 450-megawatt ("MW") electric generating plant (the "Power Plant") proposed by Valara at 4000 South Pine

[24] *Id.* at ¶ 14.

[25] *Id.* at ¶ 14.

[26] *Id.* at ¶ 15.

[27] *Id.* at ¶ 15.

[28] *Id.* at ¶ 15.

[29] *Id.* at ¶ 16.

[30] *Id.* at ¶ 16.

ELECTRONICALLY FILED - 2026 July 27 4:03 PM - SCPSC - Docket # 2026-158-E - Page 15 of 36

> Street Spartanburg, South Carolina 29302 (the "Site") to power the Valara data center (the "Data Center") constitutes a "major utility facility" as defined by the S.C. Utility Facility Siting and Environmental Protection Act ("Siting Act"), S.C. Code Ann. § 58-33-20(2)(a), and as such, requires a certificate of environmental compatibility and public convenience and necessity ("CECPCN") before Valara can lawfully continue construction at the Site.[31]

The Petition further requests that the Commission issue:

> [A] Rule to Show Cause Order requiring Valara to appear and explain why it should not cease ongoing construction at the Site pending the outcome of Petitioners' declaratory order proceeding and any subsequent Siting Act proceeding.[32]

Petitioners sought expedited relief as to their Petition for a Rule to Show Cause "given that construction is already proceeding at the Site."[33]

Following further discussions between the parties, Valara and Petitioners submitted a joint proposal to the Commission on July 14, 2026, to address the threshold jurisdictional and Utility Siting Act applicability issues in an initial phase of this proceeding.[34] Under that proposal, the parties agreed that pre-filing testimony deadlines and other filing deadlines under the Commission's prior schedule would be held in abeyance pending the Commission's ruling on those threshold issues, and that Valara would file a Motion to Dismiss addressing jurisdictional issues in the first instance.[35] The Commission approved that joint request on July 16.[36] Consistent with that agreed schedule, Valara submits this Motion to Dismiss.

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[31] Petition at 2.

[32] *Id.*

[33] *Id.*

[34] Docket No. 2026-158-E, (July 14 Joint Request).

[35] *Id.*

[36] Docket No. 2026-158-E, (July 16 Order Adopting Procedural Schedule).

ELECTRONICALLY FILED - 2026 July 27 4:03 PM - SCPSC - Docket # 2026-158-E - Page 16 of 36

LEGAL STANDARD

The Commission "acts as a deliberative body in certain areas, and therefore would be equivalent to a Court for purposes of the question of subject matter jurisdiction." *In Re: Rosia M. Morgan v. Charter Commc'ns., LLC (Spectrum)*, Docket No. 2023-372-C, Order No. 2024-134, 2024 WL 755501 (S.C.P.S.C.), at *2–3 (Feb. 15, 2024). "The Commission's jurisdictional authority is limited to only those subjects upon which authority has been granted by Statute." *In Re: Sarah Zito; Alvaro Sarmiento, Jr.; Mark Shinn; and Daniel Bermudez, v. Strata Audubon, LLC and Strata Veridian, LLC*, Docket No. 2022-84-WS, Order No. 2022-503, 2022 WL 3098732 (S.C.P.S.C.) at *1 (July 21, 2022), *aff'd* 447 S.C. 405, 926 S.E.2d 795 (Ct. App. 2026). The Legislature has delegated to the Commission the "power and jurisdiction to supervise and regulate the rates and service of every public utility in this State and to fix just and reasonable standards, classifications, regulations, practices, and measurements of service to be furnished, imposed, or observed, and followed by every public utility in this State." *In re Blue Granite Water Co.*, 434 S.C. 180, 184–85, 862 S.E.2d 887, 889 (2021). "It is well-settled that when a matter is raised with the Commission that is beyond the jurisdictional authority granted to the Commission by statute, '[t]he Commission must dismiss a complaint where it lacks subject matter jurisdiction.'" *Morgan,* 2024 WL 755501, at *2 (quoting Order No. 2020-718, p.5 (Dec. 22, 2020)); *In re: Michael Madden v. Charter Spectrum*, Docket No. 2020-224-C, Order No. 2020-718, 2020 WL 7660662 (S.C.P.S.C.), at *3 (Dec. 22, 2020) (same).

A motion to dismiss for a lack of subject matter jurisdiction is governed by South Carolina Rules of Civil Procedure Rule 12(b)(1). "The Court may consider affidavits on a question of law in a jurisdictional motion without converting the motion to one for summary judgment." *Posey v. Proper Mold & Eng'g, Inc.*, 378 S.C. 210, 217, 661 S.E.2d 395, 399 (Ct. App. 2008). And, "in

ELECTRONICALLY FILED - 2026 July 27 4:03 PM - SCPSC - Docket # 2026-158-E - Page 17 of 36

determining whether the Legislature has given another entity exclusive jurisdiction over a case, a court must look to the relevant statute." *Dema v. Tenet Physician Servs.-Hilton Head, Inc.*, 383 S.C. 115, 121, 678 S.E.2d 430, 433 (2009).

ARGUMENT

The Commission should dismiss the Petition for two independent threshold reasons. *First*, the Commission lacks jurisdiction to hear the Petition because Valara is not a public utility and the HPCC does not and will not generate, sell, distribute, or furnish electricity to the public for compensation or otherwise. *Second*, Petitioners lack statutory authority to initiate this proceeding because the Utility Siting Act creates no private enforcement mechanism.

I. THE COMMISSION HAS NO JURISDICTION OVER A FACILITY THAT GENERATES ELECTRICITY SOLELY FOR ITS OWN USE

The Commission must have jurisdiction over Valara *before* it can require a CECPCN, issue a show-cause order, or halt construction. Title 58 provides no such jurisdiction. The Act imposes requirements on—and confers jurisdiction over—*public* utilities. It does not apply to behind-the-meter, private generation used solely for the owner's own operations. That is precisely how Valara's operation is structured. The Commission should adhere to the statutory limits on its jurisdiction and dismiss the Petition.

A. Title 58 Limits the Commission's Jurisdiction to Public Utilities

The Commission is a creature of statute that exercises "only such powers as are conferred, expressly or by reasonably necessary implication, or such as are merely incidental to the powers expressly granted." *Black River Elec. Coop., Inc. v. Public Service Comm'n*, 238 S.C. 282, 292, 120 S.E.2d 6, 11 (1961). As the South Carolina Supreme Court explained in *Piedmont & N. Ry. Co. v. Scott*, "asserted powers are not to be derived from mere inference" and "[a]ny reasonable

ELECTRONICALLY FILED - 2026 July 27 4:03 PM - SCPSC - Docket # 2026-158-E - Page 18 of 36

doubt of the existence in the Commission of any particular power should ordinarily be resolved *against* its exercise of the power." 202 S.C. 207, 24 S.E.2d 353, 360 (1943) (emphasis added).

The text of Chapter 3 vests the Commission with the "power and jurisdiction to supervise and regulate the rates and service of *every public utility* in this State." S.C. Code Ann. § 58-3-140(A) (emphasis added). "Public utility" under Chapter 3 is defined, in relevant part, as an "electrical utility" under Chapter 27—one of several industry-specific categories (including telephone utilities, railroads, and motor carriers) that the General Assembly cross-referenced into a single definition. *Id.* § 58-3-5(6). For an entity generating and using electricity, the relevant category is "electrical utility," which is defined by reference to entities owning or operating equipment "for generating, transmitting, delivering, or furnishing electricity for street, railway, *or other public uses* or the production of light, heat or power *to or for the public for compensation*." *Id.* §§ 58-27-10(6)-(7) (emphasis added). Indeed, the definition of "electrical utility"—in both the statute and the Commission's own regulations—expressly excludes a person or entity "furnishing electricity only to himself or itself, their residents, employees, or tenants *when such current is not resold or used by others*." *Id.* § 58-27-10(7) (emphasis added); *see also* S.C. Code Ann. Regs. 103-302(6) (excluding the same self-generators from the Commission's regulatory definition of "Electrical Utility"). So, under the plain text, the jurisdictional touchstone is supply of public service in exchange for compensation—not mere ownership of generating equipment.

Zooming out confirms the focus on *public* utilities. The General Assembly created the Commission against the backdrop of the State's constitutional mandate to "provide for appropriate regulation of common carriers, *publicly owned utilities*, and *privately owned utilities serving the public* as and to the extent required by the public interest." S.C. Const art. IX, § 1 (emphasis added). And the statutory structure governing the Commission's regulatory authority focuses on public-

ELECTRONICALLY FILED - 2026 July 27 4:03 PM - SCPSC - Docket # 2026-158-E - Page 19 of 36

facing operations. Its chapters govern such things as gas, heat, water, sewerage collection and disposal companies (Chapter 5, S.C. Code Ann. § 58-5-10 *et seq.*); telephone companies (Chapter 9, S.C. Code Ann. § 58-9-10 *et seq.*); radio common carriers (Chapter 11, S.C. Code Ann. § 58-11-10 *et seq.*); and railroad companies (Chapter 15, S.C. Code Ann. § 58-15-10 *et seq.*)—quintessential public service providers.

Consistent with that focus, the Commission and South Carolina courts have rejected the premise that the Commission may regulate an entity that neither furnishes service to the public nor sells electricity for public use, or that otherwise falls outside the statutory definition of a public utility. In *In re: Application of Kiawah Island Utility, Inc.*, the Commission held that "we only have jurisdiction over public utilities" and that, absent "additional statute or authority," it has "no authority whatsoever to order an affiliate company to pay back any funds to a utility," because "[t]he Commission's authority rests solely over the public utilities themselves." Docket No. 96-168-W/S, Order No. 2000-927, at 2–3 (Nov. 13, 2000). The South Carolina Supreme Court affirmed, agreeing that the Commission "simply does not have authority to order the relief requested" against a non-utility affiliate because it "had jurisdiction only over public utilities." *Kiawah Prop. Owners Grp. v. Pub. Serv. Comm'n of South Carolina,* 357 S.C. 232, 238, 593 S.E.2d 148, 151 (2004).

The Commission has similarly dismissed complaints involving entities that do not sell electricity or furnish services to the public, because Section 58-3-140(A) supplies no jurisdiction over them. *See Madden*, 2020 WL 7660662, at *3–4; *see also In re: Sarah Zito*, Docket No. 2022-84-WS, Order No. 2022-503, 2022 WL 3098732 (S.C.P.S.C.), at *1–3 (July 21, 2022) (explaining that "[t]he Commission's jurisdictional authority is limited to only those subjects upon which authority has been granted by statute"); *see also* Initial Legal Brief of the S.C.Coastal Conservation

ELECTRONICALLY FILED - 2026 July 27 4:03 PM - SCPSC - Docket # 2026-158-E - Page 20 of 36

League at 23, *Pine Gate Renewables, LLC & Catalina Solar, LLC v. Dominion Energy S.C., Inc.*, Docket Nos. 2023-38-E, 2023-39-E (June 8, 2023) (asserting that "a threshold metric tied to capacity and grid impact makes more sense given the overall statutory framework.").

Here, Valara plainly falls outside the scope of the Commission's regulatory authority over public utilities. Valara's onsite generation exists solely to power its computing operations, just as manufacturers, chemical plants, refineries, and other industrial facilities may generate electricity to support their own operations.[37] Valara does not sell, distribute, or furnish electricity to the public.[38] That is, Valara provides no "power *to or for the public for compensation*." S.C. Code Ann. §§ 58-27-10(7) (emphasis added). Valara's generators operate in load-following mode, producing power to match the HPCC's demand rather than at a fixed output, so the facility has no need or occasion to export power.[39] Nor could Valara export power to the public grid: the existing interconnection is configured for import only, contains no backfeed protection or export-rated equipment, and permits Valara only to *acquire* up to 13 MW of electricity from the grid as needed—not to send power in the other direction.[40] Because Valara does not and will not furnish electricity for public use or compensation, it is neither an "electrical utility" nor a "public utility" under Title 58, and no jurisdictional basis exists to regulate it as if it were a public utility.

B. Section 58-33-110 Does Not Expand the Commission's Jurisdiction to Reach Private Self-Generators

Chapter 33's Utility Siting Act does not expand the Commission's reach—it, too, applies only to public utilities. Petitioners' theory for applying Chapter 33 to Valara is essentially based

[37] Affidavit of M. Johnson, at ¶ 8.

[38] *Id.* at ¶ 9; § 58-27-10(7).

[39] Affidavit of M. Johnson, at ¶ 13.

[40] Affidavit of M. Johnson at ¶¶ 14–16.

ELECTRONICALLY FILED - 2026 July 27 4:03 PM - SCPSC - Docket # 2026-158-E - Page 21 of 36

on the following logic: Section 58-33-110(1) provides that "no person shall commence to construct a major utility facility" without first obtaining a CECPCN; the Act defines "person" broadly to include virtually any entity; and Valara's planned generation may ultimately exceed 75 MW, thereby making it a "major utility facility." Pet. ¶¶ 44–46. That argument employs "a sterile literalism which loses sight of the forest for the trees." *New York Tr. Co. v. Comm'r of Internal Revenue*, 68 F.2d 19, 20 (2d Cir. 1933) (Hand, J.). It advances an interpretation that conflicts with every textual, structural, and contextual indicator of what Chapter 33 was designed to do.

Petitioners seek to "isolate[] phrases within the statute," instead of "read[ing] the statute as a whole and in a manner consonant and in harmony with its purpose." *Duke Energy Corp.,* 415 S.C. at 355, 782 S.E.2d at 592. Petitioners ignore the backdrop against which the Siting Act operates: the Commission's regulation of *public utilities*, *see supra* I(A), which the Act defines to cover "the generating, distributing, sale, delivery, or furnishing of electricity ***for public use***." S.C. Code Ann. § 58-33-20 (emphasis added). Indeed, the Act itself is aptly named the "*Utility* Facility Siting and Environmental Protection Act." S.C. Code Ann. § 58-33-10 (emphasis added); *see Lindsay v. S. Farm Bureau Cas. Ins. Co.*, 258 S.C. 272, 277, 188 S.E.2d 374, 376 (1972) (stating that "[i]t is proper to consider the title or caption of an act in aid of construction to show the intent of the legislature" (internal citation and quotations omitted)). Against this backdrop, the notion that the inclusion of the term "major ***utility*** facility" somehow expands jurisdiction to cover private facilities is simply wrong and totally inconsistent with historical construction of this term. *See Arkansas Charcoal Co. v. Arkansas Pub. Serv. Comm'n*, 299 Ark. 359, 361–362, 773 S.W.2d 427, 429–30 (1989) (construing, in a similar siting act with identical language, "major utility facility" to refer only to public utilities); *see also* Initial Legal Brief of the S.C. Coastal Conservation League at 14, *Pine Gate Renewables, LLC & Catalina Solar, LLC* (June 8, 2023) (arguing that the

ELECTRONICALLY FILED - 2026 July 27 4:03 PM - SCPSC - Docket # 2026-158-E - Page 22 of 36

General Assembly "defined 'major utility facilities' using an electrical capacity metric reflecting the facilit[y's] contribution to the grid: 75 MW AC.").

The statutory structure makes plain that Section 58-33-110 does not operate as a backdoor expansion of the Commission's jurisdiction. When submitting a CECPCN, an applicant must provide findings concerning generation alternatives, transmission constraints, ancillary services, and "system efficiency and reliability," S.C. Code Ann. § 58-33-110(8)(a), and the Commission must find that the facility serves "system economy and reliability" and that "public convenience and necessity require [its] construction." *Id.* § 58-33-160(1); *see Pine Gate Renewables, LLC & Catalina Solar, LLC*, Order No. 2023-906, at 116 (Dec. 28, 2023) (underscoring that the Act's framework is built around delivery of power to the *public* grid); *see also* Initial Legal Brief of the S.C. Coastal Conservation League at 23, *Pine Gate Renewables, LLC & Catalina Solar, LLC* (June 8, 2023) ("That framework—that prioritization—supports the idea that the [Utility] Siting Act threshold depends on grid contribution."). Those requirements presuppose facilities intended to serve a utility system and public demand. They do not naturally describe private generation that serves the site's industrial load and has no designed output to the public grid.[41]

The Utility Siting Act's customer- and ratepayer-focused inquiries heighten the mismatch: the certificate process asks whether a facility is needed to serve the public's projected demand and whether it is a cost-effective choice for serving a utility's ratepayers. Applying these provisions to a private party would require the Commission to evaluate whether self-generator operations are

[41] The Commission's recent CECPCN orders confirm this understanding by requiring that applicants demonstrate need by reference to utility integrated resource plans, compare alternatives based on cost-effectiveness for ratepayers, and prove that "public convenience and necessity require the construction of the facility." *See In re: Application of Kingstree East 230 LLC*, Docket No. 2024-203-E, Order No. 2025-124, at 7–8, 26–27 (Feb. 20, 2025) (finding need based on Santee Cooper's IRP and that "public convenience and necessity support the construction" of the facility); *In re: Application of SR Lambert I LLC*, Docket No. 2022-97-E, Order No. 2022-712(A), at 5–6 (Feb. 4, 2026) (same).

ELECTRONICALLY FILED - 2026 July 27 4:03 PM - SCPSC - Docket # 2026-158-E - Page 23 of 36

"needed" by the public, whether they support utility "system economy," and whether "public convenience and necessity" require their construction—questions that are fundamentally inconsistent with the statutory scheme. S.C. Code Ann. § 58-33-160(1). Courts will not construe a statute to produce "an absurd result that could not have been intended by the legislature." *Lancaster Cnty. Bar Ass'n v. S.C. Comm'n on Indigent Def.*, 380 S.C. 219, 222, 670 S.E.2d 371, 373 (S.C. 2008).

Petitioners' expansive interpretation also cannot be reconciled with the Utility Siting Act's preemption provision. Section 58-33-410 prohibits other state or regional agencies from requiring "any approval, consent, permit, certificate or other condition" for a major utility facility's construction. That structure makes sense for regulated utility projects subject to comprehensive Commission review. But applying this same provision to Valara and the HPCC would risk displacing ordinary environmental, land-use, building and local permitting regimes that private developers otherwise must satisfy as a matter of course. The statute should not be construed to produce that anomalous result. *See State v. Sweat*, 386 S.C. 339, 351, 688 S.E.2d 569, 575 (courts will reject interpretations that lead to absurd results or defeat legislative intent).

Nor can Petitioners' interpretation be reconciled with the self-generation exclusion in Section 58-27-10(7), discussed above. *See Hodges v. Rainey*, 341 S.C. 79, 83, 533 S.E.2d 578, 583 (2000) ("Statutes dealing with the same subject matter must be reconciled, if possible, so as to render both operative."). That provision reflects the General Assembly's considered judgment that an entity generating electricity solely for itself falls outside the Commission's electric-utility oversight altogether. The General Assembly did not confine that judgment to Chapter 27 but instead carried it forward into Article 3's own jurisdictional and licensing rules, which likewise apply only to entities that serve the public. *See* S.C. Code Regs. 103-301(1), 103-302(3), (5), (6).

ELECTRONICALLY FILED - 2026 July 27 4:03 PM - SCPSC - Docket # 2026-158-E - Page 24 of 36

The Commission's regulations also cut against Petitioners' interpretation. Regulation 103-304 provides that "[n]o electric system *subject to the jurisdiction* of the commission" may begin construction or operation of a generating station of more than 75 MW without first receiving a CECPCN. S.C. Code Ann. Regs. 103-304(2) (emphasis added). That phrase confirms that the certificate requirement applies only to electrical systems over which the Commission already has jurisdiction and is not a mechanism to be used to expand that jurisdiction to new entities. Yet under Petitioners' reading, the same self-generating entity that Chapter 27 and its implementing regulations place outside the Commission's electric-utility jurisdiction would nonetheless be subject to CECPCN certification and Commission oversight under Chapter 33. Nothing in Chapter 33 signals an intent to undo, through a separate certificate regime, the exclusion the General Assembly built into the definition of the entities the Commission may regulate in the first place. Related statutes should instead "be construed together" so that "each [is] given effect." *S.C. State Ports Auth. v. Jasper Cnty.*, 368 S.C. 388, 398, 629 S.E.2d 624, 629 (2006).

That jurisdictional tether in Regulation 103-304(2) is not an isolated phrase—it reflects a self-reinforcing definitional structure that runs through the Commission's Article 3 regulations, confining the certificate requirement to entities furnishing electricity *to the public*. The Commission describes its Article 3 (Electric Systems) "jurisdiction" as applying to entities "engaged as an ***electric system*** as defined in 103–302(5), herein, in the business of furnishing electric current for domestic, commercial, or industrial *customers* . . . ." S.C. Code Regs. 103-301(1) (emphasis added). Regulation 103-302(5) defines "electric system" as "any electrical utility, electric supplier, utility, electric cooperative, public utility district, governmental body or agency, including consolidated political subdivisions, or another person or corporation ***supplying electric service to the public*** . . . ." (emphasis added). "Customer" is defined as a person "being

ELECTRONICALLY FILED - 2026 July 27 4:03 PM - SCPSC - Docket # 2026-158-E - Page 25 of 36

supplied with electric service by an ***electrical utility*** under the jurisdiction of this commission." *Id*. at 103-302(3). And an "electrical utility" is limited to entities "delivering or furnishing electricity for street, railway or other *public uses* or for the production of light, heat or power ***to or for the public for compensation***" and expressly excludes an entity "furnishing electricity only to . . . itself." *Id*. at 103-302(6) (emphasis added). Every link in this definitional chain connects the Commission's jurisdiction—and therefore the reach of Regulation 103-304(2)—to entities that supply electric service *to the public*.

The Commission's decisions confirm that this same public-facing, jurisdictional boundary operates, in practice, as a grid-centric one. In *Pine Gate Renewables, LLC & Catalina Solar, LLC*, the Commission addressed how the 75 MW threshold is measured for a solar facility interconnected to and capable of delivering power into the utility grid, observing that "since passage of the Siting Act in 1971, the operating assumption of all parties in South Carolina has been that the 75 MW threshold was viewed as the ability of an electric generating plant to deliver AC power to the electric grid." Order No. 2023-906, at 114–15. That inquiry presupposes a grid-connected generator, one designed and equipped to export power to the electric system under existing interconnection and offtake arrangements.

In fact, Petitioners' counsel in this case, Southern Environmental Law Center ("SELC"), advocated vigorously in favor of the public-grid-focused inquiry of the Utility Siting Act in *Pine Gate*. There, SELC asserted that "[t]he plain text of the [Utility] Siting Act . . . makes clear that [Utility] Siting Act *applicability* is based on ***grid capacity***" and that "the Siting Act was enacted to streamline review of electrical facilities of ***statewide significance*** . . . which reflects the facility's contribution to the ***electrical grid***." Initial Brief of the S.C. Coastal Conservation League at 15, 21 (June 8, 2023) (emphasis added). The "more logical interpretation" of the Utility Siting Act, SELC

ELECTRONICALLY FILED - 2026 July 27 4:03 PM - SCPSC - Docket # 2026-158-E - Page 26 of 36

argued, is that the analysis "must be conducted with the awareness of [the facility's] corresponding impact to the state's grid." *Id.* at 19 n.35. SELC further advocated that the Commission adopt its view that the capacity threshold component in the definition of "major utility facility" be interpreted as the "facility's instantaneous ability to provide power ***to electric system load***." Brief in Support of Proposed Order at 9–10, *Pine Gate Renewables, LLC & Catalina Solar, LLC* (Aug. 22, 2023) (emphasis added). Even ORS's initial petition in *Pine Gate* reflexively described the Utility Siting Act as having a public-use component, incorporating the Act's definition of "public utility" or "utility" directly into its description of the trigger for a certificate:

> Under the [Utility] Siting Act, any person "engaged in the generating, distributing, sale, delivery, or furnishing of electricity ***for public use***" must secure from the Commission a certificate of environmental compatibility and public convenience and necessity ("Certificate") prior to commencing construction of a "major utility facility."

Pet. for Dec. Order at 1–2, Docket No. 2023-38-E (Jan. 27, 2023) (emphasis added).

Valara's HPCC is the opposite of a grid-centric facility in every respect: its generation is islanded behind an import-only interconnection, it has no export-rated equipment, and it cannot deliver power to the grid at all without new facilities on both sides of the meter.[42] *Pine Gate's* measurement inquiry confirms that the Utility Siting Act is a grid-centric statute directed at generators that participate in the public electric system, not a private facility that supplies only itself.

Consistent with the Utility Siting Act's grid-centric limit, the Commission's 55-year administration of the Utility Siting Act underscores the limits on the Commission's authority. "[T]he longstanding practice of the government can inform our determination of what the law is." *NLRB v. Noel Canning*, 573 U.S. 513, 525 (2014) (internal citations and quotations omitted). And

[42] Affidavit of M. Johnson, at ¶ 14–16.

ELECTRONICALLY FILED - 2026 July 27 4:03 PM - SCPSC - Docket # 2026-158-E - Page 27 of 36

based on Valara's review, in the 55-year history of the Act, neither the Commission nor any South Carolina court has ever required a privately owned, behind-the-meter, private captive generator to obtain a CECPCN.

Every source of authority points the same way. Petitioners' interpretation would require the Commission to exercise a jurisdiction that it has never exercised. The statute's text, context, regulations, precedent, and historical application all confirm that the Commission's electric-utility jurisdiction extends only to entities furnishing electricity for public use or compensation—not to a behind-the-meter, private self-generator like Valara. At a minimum, the statutory framework creates substantial doubt about whether the Commission may regulate Valara, and under *Piedmont*, that doubt must be resolved against the exercise of jurisdiction. 202 S.C. 207, 24 S.E.2d at 360. Because Valara is not, and will not become, a public utility, and does not, and will not, furnish electricity for public use, it falls outside the Commission's electric-utility jurisdiction, and the Petition should be dismissed with prejudice.

C. If the Utility Siting Act Already Covered Self-Generating Data Centers, the Legislature Would Not Be Trying to Pass Laws That Do

Recent legislative activity further underscores that the Utility Siting Act does not apply to Valara.

South Carolina has "long acknowledged the presumption that in adopting an amendment to a statute, the Legislature intended to change the existing law." *Key Corp. Cap. Inc. v. Cnty. of Beaufort*, 373 S.C. 55, 60, 644 S.E.2d 675, 678 (2007); *Vernon v. Harleysville Mut. Cas. Co*., 244 S.C. 152, 155, 135 S.E.2d 841, 844 (1964). Likewise, where the Legislature intends to enact new statutes, "[t]here is a presumption that the legislature has knowledge of previous legislation." *City of Camden v. Fairfield Elec. Co-op, Inc.*, 372 S.C. 543, 548, 643 S.E.2d 687, 690 (2007). These

ELECTRONICALLY FILED - 2026 July 27 4:03 PM - SCPSC - Docket # 2026-158-E - Page 28 of 36

presumptions apply just as strongly here, where South Carolina has recently taken up the regulation, siting, and generation of data centers like the HPCC.

During the 126th General Assembly, South Carolina legislators introduced multiple bills to regulate data centers, two of which—S. 902 and S. 867—would have *created* siting authority for data centers.[43] S. 902 would have vested data center siting authority in the Commission. *See* S. 902 § 58-44-20(A). S. 867 would have vested that authority in a purpose-created Data Center Development Office within the DES. *See* S. 867 § 49-35-20(A), (B)(1)(c). Both bills would have allowed data centers to utilize self-generation and would have required that the Commission "establish reasonable interconnection requirements and standby service charges[.]" *See* S. 867 § 49-35-60(H)(1); S. 902 § 58-44-130(H)(1). Plainly, none of this would have been necessary if the Legislature viewed that authority as already established.

The General Assembly's statements in proposing these bills make Petitioners' position all the more tenuous. In introducing S. 902, Senate Judiciary Subcommittee staff explained that the bill "would create a new Chapter 44 within Title 58 to provide [a] regulatory framework for data center operations in South Carolina," that "[u]nder current law, data center siting requirements are primarily limited" to local zoning and land-use restrictions, and that "the Public Service Commission currently is only involved to the extent that [it is] approving electric service agreements between investor-owned utilities and the data centers that they serve." 02/19/2026 Senate Judiciary Subcommittee at 01:03:46–01:04:53. Senator Johnson likewise described S. 867 as a bill that would "create[] a regulatory process on how you are going to site a data center." 04/28/2026 Senate Agriculture and Natural Resources Committee on 867, 4248, 5069 at 0:04:48–0:04:56. Senator Climer observed that data centers presented a "novel area of public policy for the

[43] South Carolina did not pass any of the proposed bills. *See* S. 867; S. 784; S. 902; H. 4583; and H. 5286.

ELECTRONICALLY FILED - 2026 July 27 4:03 PM - SCPSC - Docket # 2026-158-E - Page 29 of 36

Senate." *Id.* at 0:14:32–0:15:16. Here, the Commission need not just "presum[e] that the legislature has knowledge of previous legislation," *City of Camden*, 372 S.C. at 548, 643 S.E.2d at 690, it is clear that the Legislature *did* have that knowledge, and found that the current regulatory regime did not apply to projects like Valara's.

The Legislature's review is consistent with the Commission's own practice, which regularly declines jurisdiction over entities that are not public utilities or furnishing electricity for public use. *Morgan*, 2024 WL 755501 (S.C.P.S.C.), at *2–3 (finding no jurisdiction where respondent did not provide regulated services to complainant); *Madden,* 2020 WL 7660662, at *3–4 (finding no jurisdiction where respondent was "not a regulated telecommunications utility subject to the Commission's jurisdiction"); *In re: Nolas Trading Co. v. BellSouth Telecomms., Inc.,* Docket No. 2008-227-C, Order No. 2008-567, 2008 WL 9903465 (S.C.P.S.C.), at *1 (Aug. 15, 2008) (finding no jurisdiction over "matters not regulated by this Commission, namely internet access service, DSL service, and interior wiring."). Throughout extensive hearings and debate on both bills, no participant—from senators to staff to community stakeholders—suggested that the Commission currently possesses siting authority over data centers (or self-generation facilities connected to data centers) or that the Utility Siting Act applies to them.[44] Rather, both the record and this Commission's practice confirm that existing law does not vest the Commission with siting authority over private data-center generation.

[44] *See generally* 02/19/2026 Senate Judiciary Subcommittee on 175, 808, 829, 902; 03/03/2026 Senate Judiciary Subcommittee on 724, 902, 936; 03/17/2026 Senate Judiciary Subcommittee on 724, 902; 03/31/2026 Senate Judiciary Subcommittee on 724, 902; 04/08/2026 Senate Judiciary Subcommittee on 724, 902, 3474; 02/05/2026 Senate Agriculture and Natural Resources Subcommittee on 867; 02/17/2026 Senate Agriculture and Natural Resources Subcommittee on 867; 03/03/2026 Senate Agriculture and Natural Resources Subcommittee on 867; 03/10/2026 Senate Agriculture and Natural Resources Subcommittee on 867; 04/23/2026 Senate Agriculture and Natural Resources Committee on 867, 4248, 5069; and 04/28/2026 Senate Agriculture and Natural Resources Committee on 867, 4248, 5069.

ELECTRONICALLY FILED - 2026 July 27 4:03 PM - SCPSC - Docket # 2026-158-E - Page 30 of 36

D. Persuasive Authority from Comparable Statutes Supports Valara's Position

The Commission's lack of jurisdiction over the HPCC finds further support in the approach taken by South Carolina's sister states, which have adopted nearly identical public service commission regimes and squarely rejected Petitioners' interpretation. In *Arkansas Charcoal Co. v. Arkansas Public Service Commission*, the Arkansas Supreme Court construed a siting act similar to South Carolina's and held it applied only to public utilities. 299 Ark. at 361–362, 773 S.W.2d at 429–30 (1989); *see* also Ark. Code Ann. § 23-18-501 *et seq.* Facing the claim that a "major utility facility" included a private gas pipeline, the Court flatly rejected that the "major utility facility" captured the private device. *Ark. Charcoal*, 299 Ark. at 360–61, 773 S.W.2d at 428–29. The court reasoned that "[p]ublic utility language pervades the act" and that "the definition of 'major utility facility' reads as 'major [public] utility facility.'" *Id.* at 361–62 (alteration in original). The Court went on, rejecting the argument that a broad "person" definition expands the Act's scope, and explaining that despite the broad definition of "person," that person "must still be constructing a 'major utility facility,' i.e., a 'major public utility facility,' according to the statutory definition." *Id.* That same analysis should apply here.

Moreover, where other state commissions applied siting requirements to non-utility generation, they have done so under express legislative direction and under materially different statutory frameworks. For example, Ohio assigns siting authority to a dedicated power siting board with broader jurisdiction over all "electric power," rather than particularly public utilities. *See, e.g.*, Ohio Rev. Code Ann. § 4906.03. Similarly, states such as Minnesota use broader statutory terms like "large energy facility" rather than "major *utility* facility" and because of that broad language, have concluded their siting statutes extend to non-utilities. *See* Minn. Stat. § 216B.243, Subd. 2; Order Requiring Certificate of Need and Granting Exemption from Certain Application Data Requirements, *In re Amazon Data Servs.*, Docket No. PT-7151/CN-24-435 (Minn. Pub. Utils.

ELECTRONICALLY FILED - 2026 July 27 4:03 PM - SCPSC - Docket # 2026-158-E - Page 31 of 36

Comm'n Apr. 1, 2025). Tellingly, Minnesota does use the term "major utility facility" elsewhere, but only for requirements expressly limited to "public utilit[ies]." Minn. Stat. § 216B.24, Subd. 2. South Carolina's statutory scheme mirrors that distinction, but lacks the broader regulatory scheme that Minnesota adopted.

Simply put—no commission or state with a comparable regime has relied on the siting of a "major utility facility" to establish jurisdiction over a private self-generator. Rather, all have required a more direct vesting language that South Carolina has not imposed.

II. CHAPTER 33 CREATES NO PRIVATE ENFORCEMENT MECHANISM FOR PETITIONERS

Even if the Commission had jurisdiction over Valara and the HPCC, this Petition must still be dismissed because Chapter 33 creates no private enforcement mechanism authorizing Petitioners to seek the relief they demand: an order compelling Valara to obtain a CECPCN and to halt construction.

Private parties may initiate Commission proceedings only when authorized by the General Assembly. *See Black River Elec. Co-op, Inc.*, 238 S.C. at 288–294, 120 S.E.2d at 9–11 (dismissing electric cooperative's petition before the Commission for lack of standing where the cooperative was not authorized by statute to initiate such proceedings); *Blue Cross & Blue Shield v. S.C. Indus. Comm'n*, 274 S.C. 204, 207, 262 S.E.2d 35, 37 (1980) (holding that the lack of any authorizing statute "clearly supports the finding that Blue Cross is without standing before the South Carolina Industrial Commission"); *cf. Pres. Soc'y of Charleston v. S.C. Dep't of Health & Env't Control,* 430 S.C. 200, 210, 845 S.E.2d 481, 486 (2020) (holding that a citizens' group qualified as "affected persons" entitled to a contested case hearing under Section 44-1-60(G) because the statute expressly named "affected person[s]" as an authorized category.). "The legislative intent to grant or withhold a private right of action for violation of a statute or the failure to perform a statutory

ELECTRONICALLY FILED - 2026 July 27 4:03 PM - SCPSC - Docket # 2026-158-E - Page 32 of 36

duty, is determined primarily from the language of the statute." *Dorman v. Aiken Commc'ns, Inc.*, 303 S.C. 63, 67, 398 S.E.2d 687, 689 (1990) (quoting *Whitworth v. Fast Fare Mkts. of S.C., Inc.*, 289 S.C. 418, 420, 338 S.E.2d 155 (1985)).

Neither the Commission's procedural rules nor the Utility Siting Act supply a mechanism for Petitioners—private advocacy groups—to compel enforcement against another entity's operations. By the terms of the Utility Siting Act, the Commission initiates a "certification proceeding" only upon the filing of a certification application. S.C. Code Ann. §§ 58-33-120, 58-33-130, 58-33-140. An applicant initiates the process by filing an application, *Id.* § 58-33-120(1); the Commission reviews the application, *Id.* §§ 58-33-130, 58-33-160); and ORS enforces compliance with the Chapter, *Id.* § 58-33-320. No provision authorizes a private party to demand that another "person" obtain a certificate or cease construction. Chapter 33 allows third parties *to intervene* in an existing certification proceeding. *See id.* § 58-33-140(1)(a)–(d) (identifying the applicant, ORS, specified state agencies, municipalities, and intervenors as the parties to such proceedings). But nothing in the Commission's procedural rules nor the Utility Siting Act authorize a private party to initiate a proceeding to demand that another "person" obtain a certificate or cease construction. *Cf. Dorman*, 303 S.C. at 67, 398 S.E.2d at 689.

The absence of any such authorization evinces a clear legislative intent to preclude privately initiated certification proceedings. Other chapters expressly authorize private enforcement. For example, in Chapter 27, Section 58-27-1940 permits "***[a]ny person, corporation, or municipality*** having an interest in the subject matter" to petition the Commission concerning an act or omission by "any electrical utility" in alleged violation of a law the Commission administers. S.C. Code Ann. § 58-27-1940 (emphasis added). Chapter 33 contains no comparable private enforcement mechanism. When one provision of a statutory scheme expressly includes a

ELECTRONICALLY FILED - 2026 July 27 4:03 PM - SCPSC - Docket # 2026-158-E - Page 33 of 36

right that a related provision conspicuously omits, South Carolina law presumes the omission is intentional. *See Byrd v. Irmo High Sch.*, 321 S.C. 426, 433–34, 468 S.E.2d 861, 865 (1996) (discussing negative implication doctrine); *Doe v. Marion*, 373 S.C. 390, 397–98, 645 S.E.2d 245, 248–49 (2007) (similar). That is, that the General Assembly granted private enforcement in Chapter 27 but withheld it in Chapter 33 reflects a deliberate choice to withhold private enforcement proceedings.

The structure of Chapter 33 confirms that no provision authorizes a privately initiated certification proceeding. Section 58-33-320 acts as the sole enforcement mechanism "to enforce compliance with this chapter or the provisions of a certificate issued hereunder." S.C. Code Ann. § 58-33-320. And that provision contemplates enforcement "by the Office of Regulatory Staff" in *court*, not certification proceedings before the Commission. *Id.* The provision of that alternative "method of enforcing" the statute "suggests that Congress intended to preclude others." *Cf. Alexander v. Sandoval*, 532 U.S. 275, 290–91 (2001); *Olson v. Fac. House of Carolina, Inc.*, 344 S.C. 194, at 209–10, 544 S.E.2d 38, 46 (Ct. App. 2001) (where a statute "places further enforcement of its provisions solely with public officials rather than private individuals" there is not "a private cause of action").

The Commission's Regulation 103-825 does not change the conclusion. That provision permits petitions "for any relief . . . which the Commission is empowered to grant *under its statutory authority*." S.C. Code Ann. Regs. 103-825 (emphasis added). But the "statutory authority" invoked by Petitioners—Chapter 33—forecloses the specific relief Petitioners demand: an order compelling Valara to obtain a CECPCN and to halt construction. Such an order is the precise enforcement that Chapter 33 reserves exclusively to ORS. *See* S.C. Code Ann. § 58-33-320. Reading Regulation 103-825 to authorize privately initiated certification proceedings would

ELECTRONICALLY FILED - 2026 July 27 4:03 PM - SCPSC - Docket # 2026-158-E - Page 34 of 36

not be "a construction of a statute, but, in effect, an enlargement of it." *Nichols v. United States*, 578 U.S. 104, 110 (2016). Section 58-33-320 reflects the legislature's determination that enforcing Chapter 33 is a power reserved to a specific regulatory actor with the institutional expertise and accountability to exercise it. *See S.C. Energy Users Comm. v. S.C. Pub. Serv. Comm'n*, 388 S.C. 486, 491, 697 S.E.2d 587, 590 (2010) ("The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature.").

Consistent with that structure, Valara is unaware of any proceeding in which a private third party successfully invoked Chapter 33 to compel a facility owner to apply for a CECPCN or halt construction. The only private parties who have invoked the Utility Siting Act's declaratory mechanism are facility owners themselves, seeking a declaratory order that they are not subject to the Act's requirements. *See, e.g., Pine Gate Renewables, LLC & Catalina Solar LLC*, Order No. 2023-906 (Dec. 28, 2023); *Orangeburg County Solar Project*, Docket No. 2021-114-E, (Sept. 22, 2021). The total absence of precedent, after decades of the Utility Siting Act's operation, confirms that no such right exists. And it reflects the reality that opening the door to proceedings initiated by private parties would subject the Commission "to an overwhelming number" of hearings "that the General Assembly did not see fit to subject to" review. *Amisub of S.C., Inc. v. S.C. Dep't of Health & Env't Control*, 403 S.C. 576, 596, 743 S.E.2d 786, 797 (2013).

Petitioners may believe, as a policy matter, that Chapter 33 should reach Valara, but that is a judgment for the General Assembly to make through legislation, not for a private litigant to enforce. It is a rudimentary principle of statutory interpretation—a principle "so obvious that it seems absurd to recite it"—that, where a statute omits an authorization, "[t]he absent provision cannot be supplied by the courts." Antonin Scalia & Bryan A. Garner, Reading Law: The

Interpretation of Legal Texts 93-94 (2012) (Scalia & Garner). The same goes for Commissions. The Petition should be dismissed.

CONCLUSION

For these reasons, Valara respectfully requests that the Commission dismiss the Petition.

DATED: July 27, 2026

Respectfully submitted,

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ELECTRONICALLY FILED - 2026 July 27 4:03 PM - SCPSC - Docket # 2026-158-E - Page 35 of 36

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ELECTRONICALLY FILED - 2026 July 27 4:03 PM - SCPSC - Docket # 2026-158-E - Page 36 of 36

ELECTRONICALLY FILED - 2026 August 3 6:34 PM - SCPSC - Docket # 2026-158-E - Page 1 of 36

BEFORE
THE PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA

DOCKET NO. 2026-158-E

Concerned Citizens of Spartanburg County and Southern Alliance for Clean Energy, Petitioners, v. Valara Holdings LLC, Respondent.	)	**CONCERNED CITIZENS OF SPARTANBURG COUNTY AND SOUTHERN ALLIANCE FOR CLEAN ENERGY'S RESPONSE IN OPPOSITION TO VALARA HOLDINGS, LLC'S MOTION TO DISMISS THE PETITION**

ELECTRONICALLY FILED - 2026 August 3 6:34 PM - SCPSC - Docket # 2026-158-E - Page 2 of 36

TABLE OF CONTENTS

INTRODUCTION AND BACKGROUND 1

LEGAL STANDARDS 6

I. STATUTORY CONSTRUCTION 6

II. SITING ACT REQUIREMENTS 8

III. RULES GOVERNING PETITIONS 11

IV. RULE 12(B)(1) MOTIONS TO DISMISS 11

ARGUMENT 12

I. S.C. CODE ANN. § 58-33-110(1) GIVES THE COMMISSION JURISDICTION OVER *ANY PERSON* SEEKING TO CONSTRUCT A GENERATING FACILITY DESIGNED FOR, OR CAPABLE OF OPERATING AT, OVER 75 MW 12

A. The Commission's Broad Ratemaking Authority Over Public Utilities Does Not Limit its Jurisdiction Under the Siting Act 12

B. The Plain Language of Section 58-33-110 Supports Its Application to the Valara Power Plant 15

C. The History of the Siting Act Shows the Legislature Did Not Intend to Limit Its Applicability to Utilities Generating Electricity for Public Use 19

D. Nothing in the Siting Act or the Commission's Prior Orders Justifies a Finding That Valara Should Not Be Required to Obtain a Certificate 20

E. States With Similar Siting Requirements Have Applied Them to Non-Exporting Facilities 26

F. Unenacted Legislation Is Irrelevant to the Commission's Interpretation of the Siting Act 30

II. PETITIONERS ARE NOT BRINGING AN ENFORCEMENT ACTION AGAINST VALARA, AND NO PRIVATE RIGHT OF ACTION IS REQUIRED TO FILE A PETITION FOR DECLARATORY ORDER OR PETITION FOR A RULE TO SHOW CAUSE WITH THE COMMISSION 32

ELECTRONICALLY FILED - 2026 August 3 6:34 PM - SCPSC - Docket # 2026-158-E - Page 3 of 36

Concerned Citizens of Spartanburg County and the Southern Alliance for Clean Energy file this response in opposition to the Motion to Dismiss the Petition for a Declaratory Order and Petition for a Rule to Show Cause ("Motion to Dismiss") filed by Valara Holdings, LLC ("Valara") on July 27, 2026. For the reasons set forth below, Petitioners respectfully request that the Public Service Commission of South Carolina (the "Commission") deny Valara's Motion to Dismiss and issue a declaratory order finding that Valara's construction of a 460 MW gas-fired power plant is subject to the Commission's jurisdiction under the S.C. Utility Facility Siting and Environmental Protection Act ("Siting Act").[1]

INTRODUCTION AND BACKGROUND

Valara, an affiliate of NorthMark Compute & Cloud ("NorthMark"), is actively constructing a large data center (the "Data Center") with a 460 megawatt ("MW") onsite gas-fired power plant (the "Power Plant") (collectively, the "Project") on South Pine Street in Spartanburg, SC.[2] On June 22, 2026, Petitioners filed a Petition for a Declaratory Order and Petition for a Rule to Show Cause Order (the "Petition") seeking, first, a declaration from the Commission that the Power Plant is subject to the Siting Act, and second, asking the Commission to direct Valara to appear and explain why it should not cease construction pending the Commission's ruling on the declaratory order petition and any subsequent Siting Act proceeding.[3]

[1] On July 16, the Commission approved a two-phased procedural schedule in this proceeding. Phase 1 addresses threshold jurisdictional issues (the subject of Valara's Motion to Dismiss) about the applicability of the Siting Act to Valara, with oral argument scheduled for August 5, 2026.
[2] Docket No. 2026-158-E, *Concerned Citizens of Spartanburg County v. Valara Holdings, LLC*, Petition for a Declaratory Order and Petition for a Rule to Show Cause Order [hereinafter, "Petition"] at ¶ 14, 43; Docket No. 2026-158-E, *Concerned Citizens of Spartanburg County v. Valara Holdings, LLC*, Valara Holdings LLC's Motion to Dismiss the Petition [hereinafter, "Motion to Dismiss"] at 4.
[3] *See generally* Petition.

ELECTRONICALLY FILED - 2026 August 3 6:34 PM - SCPSC - Docket # 2026-158-E - Page 4 of 36

As stated in the Petition, the Project has been "plagued with significant transparency failures from the start" and has resulted in widespread public outcry.[4] While Valara cites to purported economic benefits from the Project, it ignores the harm to the local community in the form of lower property values; air, water, and noise pollution; and health impacts. Further, many residents believe they were actively misled or never informed about the proposal's true nature, scale, and impact.[5] But contrary to Valara's assertions in its Motion to Dismiss,[6] Petitioners would not be before this Commission if Valara was only constructing a Data Center.[7] Petitioners are here for one simple reason: the *Power Plant* is clearly subject to the Siting Act, and it requires a Certificate of Environmental Compatibility and Public Convenience and Necessity ("Certificate") and full review by the Commission before it can be constructed or operated.[8]

Had Petitioners not filed their Petition, Valara's clear intent was to construct and operate the Power Plant without ever notifying the Commission of its activities. Despite the pendency of this proceeding, Valara is rapidly proceeding with construction at the site, even though the Siting Act prohibits commencing construction prior to obtaining a Certificate. While Valara states that Phase I of the project involves installation of gas-fired engines "whose combined generating capacity will not exceed 75 MW,"[9] Valara's air

[4] Petition at ¶ 42; Affidavit of Mark Felk at ¶ ¶ 9-13; Affidavit of Ricky Heath at ¶ ¶ 7-9; Affidavit of William "Kip" Darwin at ¶ ¶ 5-9.
[5] *Id.*
[6] Motion to Dismiss at 2 (asserting that Petitioners are seeking to halt construction of the whole Project in this proceeding).
[7] *See* Motion to Dismiss at 20-22 (discussing introduced legislation that would have given the Commission authority over siting *data centers*).
[8] Petitioners are, however, highly concerned that given Valara's actions to date, even if the Commission determines the Power Plant is subject to the Siting Act, Valara will continue constructing the full Data Center even though there is no way to supply power to it *without* the Power Plant. Even though Valara would be proceeding at its own risk, continued construction could nevertheless severely bias the later Siting Act proceeding and leave the Commission in a very difficult position.
[9] Motion to Dismiss at 5.

ELECTRONICALLY FILED - 2026 August 3 6:34 PM - SCPSC - Docket # 2026-158-E - Page 5 of 36

permit from the Department of Environmental Services ("DES"), filed as Exhibit 1 to the Motion to Dismiss, provides for twenty-four 2,103 kW permanent gas-fired generators *plus* twenty-one 1,500 kW temporary gas-fired generators, totaling approximately 82 MW of generation.[10] Phase II of the project would involve an additional five 17 MW and six 54 MW simple cycle gas-fired combustion turbines, resulting in approximately 460 MW of permanent gas-fired turbines to provide electricity to the Data Center.[11] NorthMark and Spartanburg County officials have both stated publicly that all of Valara's initial submittals to agencies indicated that the plan all along was to construct a 460 MW Power Plant on the site.[12] To date, Valara has only committed not to *operate* more than 75 MW of gas turbines at the site before oral arguments in this proceeding, meaning it very well may be constructing more than 75 MW of generation at the site right now.[13] Exhibit 1 to this response provides aerial photographs, taken June 26, 2026, showing the already-extensive construction and clearing at the Project site as of that date, including the construction of gas-fired generators, along with an affidavit from the photographer, Benjamin "Ben" Gray. There has now been more than an additional month of active construction at the site.

Over the past several years, there have been multiple instances where new questions about the Siting Act's applicability to a particular project was in question—in each of those

[10] Motion to Dismiss Ex. 1 (Sept. 17, 2025 Statement of Basis, Rev. Apr. 21, 2026), at 2.
[11] Petition Attach. 3 at 1 (Mar. 4, 2026 Statement of Basis).
[12] *See* Petitioners' Motion to Recuse Commissioner David H. Britt, Attach. 3 (Baker Maultsby, NorthMark Executive Says Power Generation Plans Made Clear From Start, SPARTANBURG HERALD-JOURNAL (June 25, 2026), https://www.goupstate.com/story/news/local/2026/06/25/what-are-northmark-data-center-power-needs-spartanburg-sc-clarity-sought-at-meeting/90686762007/)
[13] Docket No. 2026-158-E, Valara Request for a Continuance (June 29, 2026) ("Valara further confirms that it will not generate 75 MW or more before the oral argument.") The subject of the second phase of this proceeding will be whether Valara's construction of the first 50 MW of turbines has already triggered Siting Act review. In fact, this question has been settled since 1973, when the Commission found that Duke was subject to the Siting Act because the total capacity of its planned eleven 58 MW turbines was 638 MW. Even though each *individual* generating combustion turbine at its planned facility was below the 75 MW threshold, the Commission found that it had to consider the sum total of the components of that plant. Order No. 16,755, Docket No. 16,682 (March 20, 1973).

ELECTRONICALLY FILED - 2026 August 3 6:34 PM - SCPSC - Docket # 2026-158-E - Page 6 of 36

cases, the project proponents *came to the Commission first*, before beginning any construction, seeking a declaratory order about the Siting Act's applicability to their project.[14] Valara, however, decided to forge ahead based only on its own strained interpretation of the Siting Act—one which ignores the statute's plain and unambiguous statement that the Commission has jurisdiction over "*any person*" constructing an "electric generating plant and associated facilities designed for, or capable of, operation at a capacity of more than seventy-five megawatts." S.C. Code Ann. § 58-33-20 (defining "major utility facility") and § 58-33-110(1).

On July 27, 2026, Valara filed its Motion to Dismiss, seeking to dismiss the Petition on the grounds that, first, the Commission has no jurisdiction over the Power Plant because Valara is not a "public utility" and intends to use the electricity generated onsite, rather than selling it or exporting to the grid. While this is a question of first impression before the Commission, it is not a difficult one to answer. S.C. Code Ann. § 58-33-110(1) requires "any person" constructing a "major utility facility" to first obtain a Certificate. Neither the definition of "person" nor "major utility facility" makes any mention whatsoever of the purpose for which a facility will be used. Indeed, on July 27, 2026, the South Carolina Office of Regulatory Staff ("ORS") filed a Petition for Declaratory Order (the "ORS Petition") on the same central issue as this proceeding—whether behind-the-meter generating facilities exceeding 75 MW are excluded from the Siting Act—and stating that,

[14] Docket No. 2025-316-E, *In Re: Petition of Pinopolis Reliability Project LLC for Declaratory Order and Expedited Relief Requested*, Order No. 2026-43 (Jan. 15, 2026), at 1 ("Pinopolis seeks an Order declaring that a proposed Pinopolis 300 MW/1,200 MWh (4-hour) nameplate lithium iron phosphate (LFP) standalone battery energy storage system (BESS)…is not a 'major utility facility' required to obtain a [Certificate] pursuant to the [Siting Act]"); Docket No. 2021-114-E, *Petition for Declaratory Order with Verification of Orangeburg County Solar Project, LLC and Orangeburg South Solar Project, LLC both Wholly Owned Subsidiaries of Savion, LLC*, Order No. 2024-212 (Mar. 26, 2024); Docket No. 2023-39-E, *Petition for Declaratory Order of Pine Gate Renewables, LLC and Catalina Solar, LLC, Petitioners v. Dominion Energy South Carolina, Inc., Respondent*, Order No. 2023-906 (Dec. 28, 2023).

ELECTRONICALLY FILED - 2026 August 3 6:34 PM - SCPSC - Docket # 2026-158-E - Page 7 of 36

to ORS' knowledge, "S.C. Code Ann. § 58-33-110(1) previously has been applied in every circumstance to require a Certificate prior to the construction of an electric generating facility designed for or capable of operating at a capacity of more than 75 MW, without consideration of the purpose of the facility being constructed." Docket No. 2026-194-E, *Petition of South Carolina Office of Regulatory Staff for a Declaratory Order Regarding the Applicability of the Certificate Requirements of Major Utility Facilities*, Petition for Declaratory Order (July 27, 2026), at ¶ 6. Furthermore, the ORS Petition notes that large behind-the-meter generating facilities, like the Valara Power Plant, are "likely to have implications beyond the immediate relationship between the owner of the facility and the ultimate consumer of the electricity generated," including "effect[s] on broader infrastructure considerations including, but not limited to, fuel availability, infrastructure adequacy, and the reliability of electric service." *Id.* at ¶ 11. Though Valara asserts that Petitioners seek to *expand* the applicability of the Siting Act, it is actually Valara that is trying to *shrink* it. And the result would be to exempt generation facilities of *unlimited size* from the Siting Act altogether, with significant potential implications for the state's electric grid.

Valara's Motion to Dismiss further asserts that Petitioners had no right to file the Petition because the Siting Act does not contain a private right of action. This may be relevant if Petitioners had sought to bring an enforcement action, such as an injunction, against Valara in state court—an action that can only be brought by ORS. However, Petitioners filed a Petition for a Declaratory Order and Petition for a Rule to Show Cause Motion, the requirements for which are clearly laid out in S.C. Code Ann. Regs. 103-825 and which Petitioners satisfied in the Petition.

ELECTRONICALLY FILED - 2026 August 3 6:34 PM - SCPSC - Docket # 2026-158-E - Page 8 of 36

For all those reasons, presented in more detail below, the Commission should deny the Motion to Dismiss, issue a declaratory order finding that Valara's construction of the Power Plant is subject to the Commission's jurisdiction under the Siting Act, and allow this proceeding to move forward.[15]

LEGAL STANDARDS

I. STATUTORY CONSTRUCTION

"The cardinal rule of statutory construction is to ascertain and effectuate the intent of the [General Assembly]." *Hodges v. Rainey*, 533 S.E.2d 578, 581 (S.C. 2000). And "[t]he best evidence of legislative intent is the text of the statute." *Creswick v. Univ. of S.C.*, 862 S.E.2d 706, 708 (S.C. 2021). "The first question to be asked when interpreting a statute is whether the statute's meaning is clear on its face." *Id.* at 708; *see also Kennedy v. S.C. Ret. Sys.*, 549 S.E.2d 243, 246 (S.C. 2001). "If a statute's language is plain and unambiguous and conveys a clear and definite meaning, there is no occasion for employing rules of statutory interpretation and the court has no right to look for or impose another meaning." *Creswick*, 862 S.E.2d at 708 *(*citing *Miller v. Aiken*, 613 S.E.2d 364, 366 (S.C. 2005)). "Under the plain meaning rule, this Court has no right to search for or impose another meaning or resort to subtle or forced construction to change the scope of a clear and unambiguous statute." *Id.*; *see also Town of Mt. Pleasant v. Roberts*, 713 S.E.2d 278, 283 (S.C. 2011); *State v. Sweat*, 688 S.E.2d 569, 575 (S.C. 2010); *Cain v. Nationwide Prop. & Cas. Ins. Co.*, 661 S.E.2d 349, 351–52 (S.C. 2008).

[15] On July 16, the Commission approved a two-phased procedural schedule in this proceeding. Phase 1 addresses threshold jurisdictional issues (the subject of Valara's Motion to Dismiss) about the applicability of the Siting Act to Valara, with oral argument scheduled for August 5, 2026. Phase 2 of the proceeding would determine specific questions as to the Siting Act's applicability to Valara's ongoing activities at the site and is dependent on the Commission's decision on the Phase 1 issues.

ELECTRONICALLY FILED - 2026 August 3 6:34 PM - SCPSC - Docket # 2026-158-E - Page 9 of 36

When a statute defines a term, the exact language of the definition must be followed and given effect. "When 'a statute includes an explicit definition' of a term, 'we must follow that definition, even if it varies from a term's ordinary meaning.'" *Van Buren v. United States*, 593 U.S. 374, 387 (2021) (quoting *Tanzin v. Tanvir*, 592 U.S. 43, 47 (2020)). Courts must read statutes "so that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous," *State v. Sweat*, 665 S.E.2d 645, 651 (S.C. Ct. App. 2008) *aff'd*, 688 S.E.2d 569 (S.C. 2010).

Where two or more statutes deal with the same subject matter, such as where an agency is granted authority under multiple statutes, courts must attempt to harmonize those statutes rather than treat one as limiting or nullifying the other. Statutes dealing with the same subject matter must be reconciled, if possible, so as to render both operative. *Hodges v. Rainey*, 533 S.E.2d 578, 583 (S.C. 2000); *see also Butler v. Unisun Ins.*, 475 S.E.2d 758 (S.C. 1996).

Further, the South Carolina Supreme Court has made it expressly clear that no weight should be given to unenacted legislative proposals, citing "the very folly of relying on unenacted legislation." *CFRE, L.L.C. v. Greenville Cnty. Assessor,* 716 S.E.2d 877, 881 (S.C. 2011). "Failed legislative proposals are 'a particularly dangerous ground on which to rest an interpretation of a prior statute. Congressional inaction lacks persuasive significance because several equally tenable inferences may be drawn from such inaction, including the inference that the existing legislation already incorporated the offered change.'" *Id*. at 80 (quoting *Cent. Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A.,* 511 U.S. 164, 187 (1994)). Therefore, "[w]hether Congress thought the proposal unwise...or unnecessary, we cannot tell; accordingly, no inference can properly be drawn from the failure of the

Congress to act." *CFRE*, 716 S.E.2d at 884 (quoting *United States v. Price,* 361 U.S. 304, 312 (1960)); *see also Whitner v. State,* 492 S.E.2d 777, 781 (S.C. 1997) ("Generally, the legislature's subsequent acts 'cast no light on the intent of the legislature which enacted the statute being construed.'").

II. SITING ACT REQUIREMENTS

The primary operative provision of the Siting Act is in S.C. Code Ann. § 58-33-110(1), which provides, in relevant part, that "[n]o *person* shall *commence to construct* a *major utility facility* without first having obtained a certificate issued with respect to such facility by the commission." (emphasis added). Each of these is a defined term of art within the Siting Act:

1. The term "person" includes "any individual, group, firm, partnership, corporation, cooperative, association, government subdivision, government agency, local government, municipality, any other organization, or any combination of any of the foregoing, and shall include the South Carolina Public Service Authority." S.C. Code Ann. § 58-33-20(5).
2. The term "commence to construct" means "any clearing of land, excavation, or other action that would adversely affect the natural environment of the site or route of a major utility facility, but does not include surveying or changes needed for temporary use of sites or routes for nonutility purposes, or uses in securing geological data, including necessary borings to ascertain foundation conditions." S.C. Code Ann. § 58-33-20(3).

ELECTRONICALLY FILED - 2026 August 3 6:34 PM - SCPSC - Docket # 2026-158-E - Page 10 of 36

ELECTRONICALLY FILED - 2026 August 3 6:34 PM - SCPSC - Docket # 2026-158-E - Page 11 of 36

3. The term "major utility facility" is defined, in relevant part, as an "electric generating plant and associated facilities designed for, or capable of, operation at a capacity of more than seventy-five megawatts." S.C. Code Ann. § 58-33-20(2)(a).

An applicant for a Certificate is required to file an application with the Commission that contains: (i) a description of the location and of the major utility facility to be built; (ii) a summary of any studies which have been made by or for the applicant of the environmental impact of the major utility facility; (iii) a statement explaining the need for the major utility facility; and (iv) any other information the applicant may consider relevant or as the commission may by regulation or order require. S.C. Code Ann. § 58-33-120(1).

In seeking a Certificate, the applicant must provide credible information demonstrating that the facility to be built has been compared to other generation options in terms of cost, reliability, schedule constraints, fuel cost and availability, transmission constraints and costs, ancillary services capabilities, current and reasonably expected future environmental costs and restrictions, that the facility supports system efficiency and reliability in light of those considerations, and any other regulatory implications deemed legally or reasonably necessary for consideration by the Commission. S.C. Code Ann. § 58-33-110 (8)(a).

Prior to granting a Certificate, the Commission must find and determine: the need for the facility, the probable environmental impact, whether that impact is justified in light of alternative technologies and other relevant considerations, whether the facility will serve the interests of "system economy and reliability," whether there is reasonable compliance with applicable state and local laws and, finally, "that public convenience and necessity require the construction of the facility." S.C. Code Ann. § 58-33-160(1). The Siting Act

ELECTRONICALLY FILED - 2026 August 3 6:34 PM - SCPSC - Docket # 2026-158-E - Page 12 of 36

also requires the Commission to ensure that certain notice, hearing, and procedural requirements are met, including requiring notice to persons residing in municipalities where any portion of the major utility facility is to be located. S.C. Code Ann. §§ 58-33-120(2)-(4) (notice); § 58-33-130 (hearings); § 58-33-140 (required parties); and § 58-33-150 (record requirements).

The Siting Act also defines the term "public utility" or "utility" to mean "any person engaged in the generating, distributing, sale, delivery, or furnishing of electricity for public use." S.C. Code Ann. § 58-33-20. The Siting Act includes several provisions that apply only to "utilities." *See* S.C. Code Ann. § 58-33-110(8)(b)(iv)-(v) (giving ORS authority to provide a report to the Commission regarding a facility and, if applicable, whether it "is consistent with an integrated resource plan or update previously filed with the commission or is otherwise justified by…modeling comparable to that filed as part of the utility's integrated resource plan" and "an assessment detailing the treatment of utility affiliates"); S.C. Code Ann. § 58-33-110(10) ("Notwithstanding any other provision in this section, an electrical utility serving customers in this state may seek a [Certificate] when building a major utility facility…in another state but within the electrical utility's balancing area in South Carolina."); S.C. Code Ann. § 58-33-196 ("Electrical utilities" are encouraged to explore the potential for deploying advanced nuclear technologies and that "a utility whose rates are regulated by the Commission must provide estimates of the cost" of such studies to the commission for review").

ELECTRONICALLY FILED - 2026 August 3 6:34 PM - SCPSC - Docket # 2026-158-E - Page 13 of 36

III. RULES GOVERNING PETITIONS

S.C. Code Ann. Regs. 103-825 provides that "[p]etitions may be submitted to the Commission for any relief, other than for an adjustment of rates and charges, which the Commission is empowered to grant under its statutory authority. Petitions which may be filed include: Petition for Rulemaking, Petition for a Declaratory Order, Petition to Intervene, Petition for Rehearing or Reconsideration, and Petition for a Rule to Show Cause." *Id.*

Regulation 103-825(A) provides that "[p]etitions shall state clearly and concisely the petitioner's grounds of interest in the subject matter, the facts relied upon, and the relief sought," and that "[p]etitions shall cite by appropriate reference the statutory provision or other authority relied upon for relief." Under the Commission's regulations, "[a] Petition for Declaratory Order to determine the applicability of any statute or of any rule or order of the Commission shall state clearly and concisely: (a) A full disclosure of the petitioner's interest; (b) The uncertainty which is the subject of the petition; (c) The statutory provision or other authority involved; (d) A complete statement of the facts prompting the petition." S.C. Code Ann. Regs. 103-825 (A)(2).

IV. RULE 12(B)(1) MOTIONS TO DISMISS

A motion to dismiss for a lack of subject matter jurisdiction is governed by SCRCP Rule 12(b)(1). In determining whether to grant a motion to dismiss under SCRCP Rule 12(b)(1), the Commission must determine whether the matter goes "beyond the jurisdictional authority granted to the Commission by statute." *In Re: Rosia M. Morgan Complainant/Petitioner v. Charter Comms., LLC, Defendant/Respondent*, Docket No. 2023-372-C, Order No. 2024-134, at 2–3 (Feb. 15, 2024). "[W]hen a matter is raised with

ELECTRONICALLY FILED - 2026 August 3 6:34 PM - SCPSC - Docket # 2026-158-E - Page 14 of 36

the Commission that is beyond the jurisdictional authority granted to the Commission by statute, '[t]he Commission must dismiss a complaint where it lacks subject matter jurisdiction.'" *Id.* at 2; *see also In Re: Ms. Karen Million, Complainant vs. Duke Power, Respondent*, Docket No. 2002-401-E, Order No. 2003-116, at 1 (Mar. 5, 2003) ("Even though this Commission is not a court, it acts as a deliberative body in certain areas, and therefore would be equivalent to a Court for purposes of the question of subject matter jurisdiction").

ARGUMENT

I. S.C. CODE ANN. § 58-33-110(1) GIVES THE COMMISSION JURISDICTION OVER *ANY PERSON* SEEKING TO CONSTRUCT A GENERATING FACILITY DESIGNED FOR, OR CAPABLE OF OPERATING AT, OVER 75 MW

A. The Commission's Broad Ratemaking Authority Over Public Utilities Does Not Limit its Jurisdiction Under the Siting Act

Valara's Motion to Dismiss first argues that under Title 58, the Commission has no authority over non-utilities at all, citing to S.C. Code Ann. § 58-3-140(A), which vests the Commission with the "power and jurisdiction to supervise and regulate the rates and services of every public utility in this State," along with various provisions under Title 58, such as those in Chapter 27, that set out the Commission's broad supervisory authority over electric utilities and electric cooperatives.[16] As Valara correctly identifies, the Commission is a "creature[] of statute" that "possess[es] only such powers as are conferred, expressly or by reasonably necessary implication, or such as are merely incidental to the powers expressly granted." *S.C. Electric and Gas Co. v. S.C. Public Serv. Comm'n*, 272 S.E.2d 793 (S.C. 1980).

[16] Motion to Dismiss at 10.

ELECTRONICALLY FILED - 2026 August 3 6:34 PM - SCPSC - Docket # 2026-158-E - Page 15 of 36

However, Valara seems to forget that the Siting Act is, itself, a statutory grant of authority to the Commission included within Title 58. Contrary to Valara's argument, the legislature does not tie its hands by granting the Commission jurisdiction or limiting the Commission's jurisdiction in one statutory section; the legislature is fully capable of granting the Commission jurisdiction elsewhere and wherever it so chooses. As the legislature expressly provided in Chapter 27, for example, "the enumeration of the powers of the Commission as herein set forth shall not be construed to exclude the exercise of any power which the Commission would otherwise have under the provisions of law." S.C. Code Ann. § 58-27-230. Even if the legislature placed limitations on certain portions of the Commission's jurisdiction by limiting its broad ratemaking authority to regulated utilities, the legislature remains fully capable of granting the Commission with additional jurisdiction in other areas—here, in the Siting Act itself.

South Carolina law is clear that, where two or more statutes deal with the same subject matter (here, the Commission's jurisdiction), courts must attempt to harmonize those statutes rather than treat one as limiting or nullifying the other. *See Hodges*, 533 S.E.2d at 583 (providing that "statutes dealing with the same subject matter must be reconciled, if possible, so as to render both operative"). For example, *Hodges* involved two pieces of legislation—first, Santee Cooper's 1934 enabling legislation, which only allowed for the removal of Santee Cooper board members (including by advisory board members) for cause, and the 1993 Restructuring Act, which provided that the Governor could remove appointed state officers at his or her discretion. *Id.* at 582-83. The Court found that those two provisions were not in conflict because "both statutes provide alternative and complimentary [sic] means of removal," with the 1934 legislation maintaining the advisory

ELECTRONICALLY FILED - 2026 August 3 6:34 PM - SCPSC - Docket # 2026-158-E - Page 16 of 36

board's removal power, and the 1993 legislation providing the Governor with the additional authority to remove members at his or her discretion. *Id.* at 583.

Here, Title 58 grants the Commission with alternative and complementary jurisdiction over different types of entities in different circumstances. There is no question that the Commission's broad supervisory and ratemaking jurisdiction only extends to the public utilities that it regulates. *See, e.g.* S.C. Code Ann. § 58-3-140(A) (establishing the Commission's duty to supervise and regulate the rates and service of public utilities); § 58-27-140 (providing that the Commission may set, and utilities must follow, just and reasonable standards for electrical service); § 58-27-810 *et seq.* (requiring the Commission to approve utility rates and that rates be just and reasonable). Valara is right that the Commission's ongoing supervisory and ratemaking authority excludes those that are generating electricity for their own use. S.C. Code Ann. § 58-27-10(7).

However, under the Siting Act, the legislature *also* granted the Commission jurisdiction over a much broader potential class (any person) but for a much more limited purpose (the issuance of a Certificate) and in a much more limited circumstance—where a person is constructing a generating plant that exceeds 75 MW, a significantly large power plant. Petitioners are not arguing that Valara has to submit to broad Commission regulation, but rather that Valara must comply with the plain requirements of the Siting Act itself. Under the statute's plain language, Valara is required to apply to the Commission to obtain a Certificate for the Power Plant, just like many other non-regulated, private companies that have appeared before the Commission to do so. This interpretation effectuates both the various statutory provisions granting the Commission with broad authority over regulated utilities *and* the legislature's intentional use of the term "person" in Section 58-33-110(1).

ELECTRONICALLY FILED - 2026 August 3 6:34 PM - SCPSC - Docket # 2026-158-E - Page 17 of 36

Valara's interpretation, on the other hand, would nullify the separate authority granted to the Commission under the Siting Act and render the legislature's intentional use of the word "person" in Section 58-33-110(1) inoperative.

The fact that the Commission has not applied the Siting Act to any non-utility-owned, non-exporting power plant over 75 MW does not mean that it lacks subject matter jurisdiction over those facilities. Until recently, such facilities did not exist, and they are only emerging now with the rise in hyperscale data centers, many of which have energy demands that rival those of large cities. Petitioners are not trying to "sweep an entirely new category of private industrial facilities into Commission regulation;"[17] Valara's Power Plant would be subject to the exact same certification requirement that the Commission has applied consistently since 1971 when the Siting Act was enacted. Likewise, if Valara wishes to avoid the Siting Act in the future, it can do so in the same way that non-utilities have done since 1971—by not constructing another power plant over 75 MW.

B. <u>The Plain Language of Section 58-33-110 Supports Its Application to the Valara Power Plant</u>

Valara's motion is an attempt to rewrite the Siting Act's plain language. Valara argues that when the legislature applied the Siting Act's requirements to any "person," it actually did not mean "person" even though it conspicuously used that term; according to Valara, the legislature meant only utilities. And Valara argues that when the legislature expressly defined "major utility facility" to be "electric generating plant and associated facilities designed for, or capable of, operation at a capacity of more than seventy-five megawatts," the legislature meant to limit that clear definition to such facilities generating

[17] Motion to Dismiss at 10.

ELECTRONICALLY FILED - 2026 August 3 6:34 PM - SCPSC - Docket # 2026-158-E - Page 18 of 36

electricity "for public use"—even though it conspicuously did not include that limitation in the definition. While the legislature notably did not include those limitations in its express statutory definitions of those key terms, Valara attempts to impose multiple unstated limitations into these express definitions by importing a separate definition of "utility," or "public utility." S.C. Code Ann. § 58-33-20.[18]

Valara's interpretation flies in the face of the "cardinal rule of statutory construction," which is to "ascertain and effectuate the intent of the legislature," *Hodges,* 533 S.E.2d at 581, the "best evidence" for which is "the text of the statute." *Creswick*, 862 S.E.2d at 708. "The *first* question to be asked when interpreting a statute is whether the statute's meaning is clear on its face." *Id.* (emphasis added). Where "a statute's language is plain and unambiguous and conveys a clear and definite meaning, there is no occasion for employing rules of statutory interpretation and the court has no right to look for or impose another meaning." *Id.* at 710.

The language of Section 58-33-110(1) could not be plainer on its face: any "*person*" constructing a "major utility facility" must obtain a Certificate. The use of the word "person" rather than "utility" is legally significant. Had the legislature wished to limit the Siting Act's primary operative requirement to any "utility," it would have been extremely easy and direct for the legislature simply to begin this key provision of the Siting Act with "utility" instead of the consciously-chosen broad term "person." Yet Valara's interpretation would completely nullify the use of the word "person" in Section 58-33-110(1) by replacing it with another defined term that is much more narrow in scope. Importantly, the term "person" is intentionally defined broadly to include "any individual,

[18] *Id.* at 14.

ELECTRONICALLY FILED - 2026 August 3 6:34 PM - SCPSC - Docket # 2026-158-E - Page 19 of 36

group, firm, partnership, corporation, cooperative, association, government subdivision, government agency, local government, municipality, any other organization, or any combination of any of the foregoing," including Santee Cooper. S.C. Code Ann. § 58-33-20 (5). Yet "utility" is defined to only include a *subset* of persons: a "utility" is "any *person* engaged in the generating…of electricity for public use." § 58-33-20(6) (emphasis added). Clearly, the legislature intended Section 58-33-110(1) to apply to a broader class of entities than just "utilities."

This conclusion is further supported by the fact that other sections of the Siting Act *do* use the term "utility." *See* S.C. Code Ann. § 58-33-110(8)(b)(iv)–(v); § 58-33-110(10); § 58-33-196. Notably, each of those provisions—unlike the certification requirement in the Siting Act—could not be satisfied by non-utility entities, because they are only applicable to entities that do fall under the Commission's broader regulatory authority, such as its ratemaking or integrated resource planning responsibilities. Again, had the legislature intended to use the word "utility," it could have done so in Section 58-33-110(1), as it did elsewhere in the Act. The legislature was fully capable of limiting the scope of the Siting Act's reach to a "utility" when it intended to do so. The legislature's choice of "person" for the key provision of the Siting Act stands out in stark contrast to its intentional use of "utility" in other provisions of the same Act.

Valara's interpretation is also inconsistent with the plain language of the Siting Act because it requires *adding* language into its definition of the term "major utility facility." Had the legislature intended the definition of "major utility facility" to only include facilities furnishing electricity for public use, it could have done so by providing that clear three-word limitation in the definition; it did not, and the Commission may not depart from

ELECTRONICALLY FILED - 2026 August 3 6:34 PM - SCPSC - Docket # 2026-158-E - Page 20 of 36

the plain language of the statute to read in such a limitation (in fact, as discussed more below, a review of the Siting Act's legislative history reveals that the legislature actually *removed* any such limitation in passing the Act).

Where each defined term appears in a statute, the reader must interpret that term consistent with its statutory definition rather than its ordinary meaning. *See Tanzin*, 592 U.S. at 47 ("When 'a statute includes an explicit definition' of a term, 'we must follow that definition, even if it varies from a term's ordinary meaning.'"). Applying that principle to the relevant terms "person" and "major utility facility" under Section 58-33-110(1) results in the following plain language definition that includes the language that the legislature itself enacted:

> No "individual, group, firm, partnership, corporation, cooperative, association, government subdivision, government agency, local government, municipality, any other organization, or any combination of any of the foregoing, [including] the South Carolina Public Service Authority" shall commence to construct a[n] "electric generating plant and associated facilities designed for, or capable of operation at a capacity of more than seventy-five megawatts" without first having obtained a certificate issued with respect to such facility by the commission.

The legislature provided definitions for each relevant term included in Section 58-33-110(1), and using these definitions leaves no doubt that a Certificate is required for any generating facility exceeding 75 MW, regardless of the type of entity constructing it, or the purpose for which it will be used. The plain language of the statute conveys a clear and definite meaning, which means no other rules of statutory interpretation are necessary, and the Commission has no right to look for or impose another meaning. Only when the literal application of the statute produces an absurd result that courts will consider a different meaning. *Centex Int'l, Inc. v. S.C. Dep't of Revenue*, 750 S.E.2d 65, 69 (S.C. 2013).

ELECTRONICALLY FILED - 2026 August 3 6:34 PM - SCPSC - Docket # 2026-158-E - Page 21 of 36

C. The History of the Siting Act Shows the Legislature Did Not Intend to Limit Its Applicability to Utilities Generating Electricity for Public Use

While the plain language of the Siting Act on its own mandates denial of Valara's Motion to Dismiss, the legislative history of the Siting Act also requires the same conclusion. In 1969, the General Assembly passed Act No. 432, the immediate predecessor to the Siting Act, which established the requirement that generating plants obtain a Certificate from the Commission prior to construction.[19] Territorial Assignments Act No. 432, 1969 S.C. Acts 740, 746-747 (codified at 1962 S.C. Code §24.63.1). Section 2 of Act 432 provided that:

> [N]o *electrical utility*, electric cooperative, *public utility* district, governmental body or agency, or any other person or corporation shall begin the construction of any steam, water or other facility for the generation of electricity *to be directly or indirectly used for the furnishing of electric service to the public*…without first obtaining from the Public Service Commission a certificate that public convenience and necessity require or will require such construction; provided, however, the provisions of this section shall not apply to the South Carolina Public Service Authority.

Id. (emphasis added).

In 1971, the legislature passed the Siting Act, which supplanted the earlier law with new language that, in conspicuous and significant ways, expanded its earlier scope. The 1971 legislation requires that "any person"—not just an "electrical utility"—constructing a "major utility facility"—without the limitation of "for the furnishing of electric service to the public"—must first obtain a Certificate. Notably, the legislature expressly encompassed any "person" and did *not* include the previous requirement that a facility be used to "furnish[]…electric service to the public" in either the definition of "major utility

[19] A scanned image of Act 432 is provided as Attachment A to this Response.

ELECTRONICALLY FILED - 2026 August 3 6:34 PM - SCPSC - Docket # 2026-158-E - Page 22 of 36

facility" or the provision requiring a Certificate in what is now S.C. Code Ann. § 58-33-110(1).[20] Since that time, these two definitions under the Siting Act have remained virtually unchanged, except for small clerical changes. Again, conspicuously, the legislature also removed the specific mention of utilities from the certification requirement, instead using the broader term "person."

While the plain language of the current Siting Act controls, this legislative history shows that the legislature did *not* intend to limit the Siting Act's Certificate requirement to public utilities and generating facilities for public use—the opposite of what Valara seeks to do now. South Carolina has "long acknowledged the presumption that in adopting an amendment to a statute, the Legislature intended to change the existing law." *Key Corp. Cap. Inc. v. Cnty. of Beaufort*, 644 S.E.2d 675, 678 (S.C. 2007). In 1971, the legislature, when deciding what generating facilities would be subject to the Commission's jurisdiction under the Siting Act, specifically expanded its reach to any "person" and *removed* the requirement that a facility be used to generate electricity for public use, demonstrating that Valara's proposed limitations are contrary to the legislative intent underlying the Siting Act.

D. <u>Nothing in the Siting Act or the Commission's Prior Orders Justifies a Finding That Valara Should Not Be Required to Obtain a Certificate</u>

Nothing in the Siting Act itself, or in the Commission's prior orders, justifies a finding that Valara is exempt from the Commission's jurisdiction under the Siting Act. Valara is fully capable of submitting the application and supporting materials required by S.C. Code Ann. § 58-33-120(1) and § 58-33-110 (8)(a), and the Commission of course is

[20] A scanned image of the Act 487 of 1971 (the Siting Act) is provided as Attachment B to this Response.

ELECTRONICALLY FILED - 2026 August 3 6:34 PM - SCPSC - Docket # 2026-158-E - Page 23 of 36

fully ably to review its application in accordance with the balancing factors outlined in S.C. Code Ann. § 58-33-160(1).

Valara's Motion to Dismiss cites a number of factors—such as its purported compliance with other regulatory requirements, benefits to the local economy, or benefits to the grid and utility ratepayers—as reasons the Power Plant should not be subject to the Siting Act.[21] As an initial matter, Valara's claim that it has complied with other regulatory requirements does not mean Valara has not violated the Siting Act, the statute that is the subject of this case. In actuality, the factors Valara cites are ones that the Commission has the authority to consider when deciding whether to grant or deny a Certificate. For example, the Siting Act requires that the Commission determine "there is reasonable assurance that the proposed facility will conform to applicable State and local laws and regulations issued thereunder, including any allowable variance provisions therein." *Id.* at § 58-33-160(1)(e). The Commission is also required to determine whether "the impact of the facility upon the environment is justified," considering available alternatives and economic factors, and whether the facility "will serve the interests of system economy and reliability." *Id.* at § 58-33-160(1)(c)-(d).

In addition, Valara's Motion to Dismiss also mistakenly claims that if the Commission asserts Siting Act jurisdiction, that local and state requirements would not apply.[22] This is a serious misreading of the Siting Act's preemption provisions. The Siting Act provides that the Commission *may* preempt other state and local requirements where they are determined to be unreasonably restrictive. S.C. Code Ann. § 58-33-160(1)(e). However, in the absence of such a preemption finding, the Commission must have

[21] *See, e.g.,* Motion to Dismiss at 2, 16, 5.
[22] Motion to Dismiss at 16.

ELECTRONICALLY FILED - 2026 August 3 6:34 PM - SCPSC - Docket # 2026-158-E - Page 24 of 36

"reasonable assurance" that a facility will comply with other applicable laws. *Id.* Indeed, compliance with federal, state, and local regulatory schemes is commonly made a *condition* of a Certificate. In other words, compliance with state and local requirements is part and parcel of the grant of a Certificate, absent a preemption finding by the Commission.

Further, particularly since local government entities are provided notice and are expressly listed as parties to certification proceedings, S.C. Code Ann. § 58-33-140(1)(c), there is nothing preventing the Commission from taking the wishes of those entities, such as land use and zoning authorities, into consideration when determining whether to issue a Certificate. For example, if an entity proposed to site a generating facility in a residential area contrary to a local land use ordinance, zoning requirements, or comprehensive plan, the Commission may find that the facility is not sited appropriately. While Valara asserts, with no evidence, that review of its Power Plant would not naturally fit within the scope and application of the Siting Act, there is simply no reason to believe that would be the case.

Nor is Valara correct that Petitioners' interpretation is inconsistent with past Commission orders or positions taken in past Commission proceedings. In *Pine Gate Renewables, LLC & Catalina Solar, LLC v. Dominion Energy S.C., Inc.*, the Commission was asked to determine whether the Siting Act's 75 MW jurisdictional threshold, when applied to solar facilities, should be interpreted and applied as 75 MW direct current (DC) capacity or 75 MW alternating current (AC) capacity. Docket Nos. 2023-38-E, 2023-39-E, Order No. 2023-906 (Dec. 28, 2023), at 2. However, in Order No. 2023-906, the Commission found that "the seventy-five [MW] capacity threshold requirement to trigger the Siting Act should not be interpreted as either AC or DC. Instead, a major utility

ELECTRONICALLY FILED - 2026 August 3 6:34 PM - SCPSC - Docket # 2026-158-E - Page 25 of 36

facility's megawatt rating is determined by the designed output of the electric generating plant." *Id.* By this, the Commission meant the amount of *usable* energy the facility was designed to, or capable of, producing for the electric system. The Commission relied heavily on the fact that the entire electric system runs on AC power, and that without a solar facility's inverters, which convert solar generated power from DC to AC, "a solar…facility is *unable* to produce power for use by the *electric system*" *Id.* at 118. The Commission's Order did not specify that a facility's capacity was limited by the amount it actually sent to the grid. Likewise, the dissent explained that the outcome of the proceeding must be determined by the plain language of the statute. *Id.* at 134. The dissent focused on the power plant itself – as does the statute – and concluded that the maximum capacity of that facility exceeded the maximum set out in the statute. *Id.* at 134-35. While the majority and dissenting opinions differed on the outcome and measured the size of the power plant in different ways, both agreed that the plain language of the statute controls and that, under the plain language of the Siting Act, jurisdiction is based on the size of the power plant.

Here, there is no question that the Power Plant in question is designed for, and will be capable of producing, approximately 460 MW of usable power—otherwise, presumably, Valara would not be building it to power the Data Center. To be clear, Valara's Power Plant and Data Center are both part of the "electric system"—the Data Center is an electric consumer, and the Power Plant is an electric generating facility. Valara's power plant exceeds the minimum for jurisdiction under the plain language of the Siting Act, and that is the end of the matter.

Valara claims that Southern Environmental Law Center ("SELC"), which represented the South Carolina Coastal Conservation League ("CCL") in the Pine Gate

ELECTRONICALLY FILED - 2026 August 3 6:34 PM - SCPSC - Docket # 2026-158-E - Page 26 of 36

proceeding and represents Petitioners here, took a conflicting position in *Pine Gate* compared with the instant proceeding.[23] Valara's Motion to Dismiss asserts that CCL's counsel "advocated vigorously" in support of a "public-grid-focused" interpretation of the Siting Act, quoting portions of CCL's brief providing that the Siting Act was focused on "grid capacity" and that "the Siting Act was enacted to streamline review of electrical facilities of statewide significance."[24] However, CCL's position in that docket was entirely consistent with Petitioners' arguments here. In *Pine Gate*, CCL took the position that "grid capacity" should be measured based on the amount of *usable* power a generating facility was designed to provide to "the power grid, *from individual homes* all the way up to large transmission lines." Initial Brief of the S.C. Coastal Conservation League at 9 (emphasis added); *see also* Order No. 2023-906 at 38 (CCL "asserts that the plain language in the Siting Act supports that 'what matters is the facility as a whole, and what that means in terms of the power that it's *capable of producing* in the form that *is relevant to our AC grid*, and that's the AC capacity rating.'" (emphasis added))

CCL did not take the position that the Siting Act's applicability was based on what facilities actually send to the grid—indeed, when that very issue came up during oral arguments and the evidentiary hearing in the proceeding, CCL expressly *declined* to take that position. *Pine Gate*, Tr. at 173:23–174:16. At oral argument, counsel for CCL argued that if a person built a coal or gas plant that was more than 75 MW in capacity, but throttled the amount actually sent to the grid to *below* 75 MW, that facility would still be subject to the Siting Act, because the Siting Act's applicability is determined by the capacity the

[23] SELC is a nonprofit law firm that represents clients *pro bono* before the Commission and elsewhere; any position stated in a proceeding before the Commission is properly attributed to the party SELC represented, not SELC itself, as would be the case with legal counsel for the other parties in this matter.
[24] Motion to Dismiss at 18.

ELECTRONICALLY FILED - 2026 August 3 6:34 PM - SCPSC - Docket # 2026-158-E - Page 27 of 36

facility is *capable* of producing, *not the amount it actually sends to the grid. Id.* As to the issue of "statewide significance," CCL argued that the "the underlying purpose of the Siting Act and [other states' siting laws] is based on an assumption that *facilities that can generate a sufficiently large amount of power may serve a broader public purpose*" that warrants consolidated review by the Commission. *Id.* at 157:19–158:1 (emphasis added). In other words, CCL's position was that the Siting Act's *capacity size threshold* was the legislature's chosen proxy for whether a generating plant was of sufficient "statewide significance" to warrant regulation. That is exactly what Petitioners argue here.

Importantly, exempting large behind-the-meter electric generating facilities like Valara's Power Plant from the Siting Act would have massive statewide implications, not just for the environment, but for the electric grid and system reliability. Valara's interpretation could—and given the rise in data centers constructing onsite gas plants, likely *would*—result in businesses constructing gas, solar, or other power plants far exceeding 75 MW across the state without any Commission oversight, resulting in potentially significant environmental concerns and, if those facilities later interconnect to the grid, implications for the broader electrical grid.

The ORS Petition outlines many of these statewide concerns:

> The construction of electric generating facilities in excess of 75 MW also is likely to have implications beyond the immediate relationship between the owner of the facility and the ultimate consumer of the electricity generated. Large-scale generating facilities have an effect on broader infrastructure considerations including, but not limited to, fuel availability, infrastructure adequacy, and the reliability of electric service. For example, natural gas-fired generation may impact natural gas transportation capacity with competition for natural gas resources limiting fuel-availability during periods of extreme weather, such as occurred during Winter Storm Elliott in December 2022.

ELECTRONICALLY FILED - 2026 August 3 6:34 PM - SCPSC - Docket # 2026-158-E - Page 28 of 36

> Such reliability events demonstrate fuel supply constraints may affect electric service reliability when natural gas-fired generation may be most needed but fuel-supply is diverted or limited. As has been demonstrated in the past, reliability risks may exist even when a natural gas supplier abides by all negotiated contractual terms.

ORS Petition- ¶ 11. Indeed, ORS cited to its own "Inspection and Examination of the December 2022 Winter Storm Outages and Blackouts in the Duke Energy Carolinas, LLC and Duke Energy Progress, LLC Service Territories," filed in Docket No. ND-2023-1-E. *Id.* at fn. 3. That report indicated that "[t]hree (3) of Duke Energy's generation plants were forced off-line or forced to derate on December 24 and 25 due to insufficient natural gas pressure delivered from the Williams Transcontinental interstate pipeline ("Transco"), Piedmont Natural Gas Pipeline ("PNG"), and Fort Hill Natural Gas Authority ("Fort Hill")," and that "[b]ased on the information provided to ORS from Duke Energy, it appears there were no contractual failures related to the pressure of natural gas delivered by Transco." *Id.* In other words, the mere fact that Valara will use energy onsite does not mean it has no "statewide significance," including to the power grid.

In sum, the Siting Act and the Commission's prior orders all indicate the exact opposite of what Valara suggests and instead support Petitioners' position that the Commission must exercise jurisdiction over the Valara Power Plant.

E. States With Similar Siting Requirements Have Applied Them to Non-Exporting Facilities

Valara claims that "no commission or state with a comparable regime has relied on the siting of a 'major utility facility' to establish jurisdiction over a private self-generator."[25] Valara is simply incorrect. For one, Ohio's siting legislation—which Valara

[25] Motion to Dismiss at 24.

ELECTRONICALLY FILED - 2026 August 3 6:34 PM - SCPSC - Docket # 2026-158-E - Page 29 of 36

tries to distinguish—is nearly identical, in its relevant parts, to South Carolina's statute. Valara claims that Ohio's Power Siting Board ("Siting Board") is granted broad jurisdiction over all "electric power."[26] First, that is a grossly misleading characterization of what the cited provision of Ohio law, Ohio Rev. Code Ann. § 4906.03, provides. Rather, that provision's only mention of "electric power" is where the Siting Board is directed to:

> Adopt rules *establishing criteria for evaluating* the effects on environmental values of proposed and alternative sites, and *projected needs for electric power*, and such other rules as are necessary and convenient to implement this chapter, including rules governing application fees, supplemental application fees, and other reasonable fees to be paid by persons subject to the board's jurisdiction.

Id. at § 4906.03(C) (emphasis added). That provision merely provides that the Siting Board is empowered to develop rules for how to evaluate various criteria it is ordered to assess, including projected power needs—a far cry from Valara's claim that this provision somehow granted the Siting Board expansive authority over "all electric power." Rather, just like the Commission, Ohio's Siting Board is a "creature of statute" that may "exercise only those powers that the General Assembly confers on it," and its subject matter jurisdiction is determined by the Ohio siting law. *In re Application of Icebreaker Windpower, Inc.*, 169 Ohio St. 3d 617, 631, 2022-Ohio-2742, 207 N.E.3d 651, 665 (2022). Indeed, Ohio courts "apply the same standard of review to [Siting Board] power-siting determinations that [they] apply to orders of the Public Utilities Commission of Ohio. *Id.*, 169 Ohio St. 3d at 620.

[26] Motion to Dismiss at 23.

ELECTRONICALLY FILED - 2026 August 3 6:34 PM - SCPSC - Docket # 2026-158-E - Page 30 of 36

Ohio's siting requirements are remarkably similar to those in the South Carolina Siting Act. For example, the certificate requirement in Ohio Rev. Code Ann. § 4906.04, provides that:

> No *person* shall *commence to construct* a *major utility facility* in this state without first having obtained a certificate for the facility. The replacement of an existing facility with a like facility, as determined by the power siting board, shall not constitute construction of a major utility facility. Such replacement of a like facility is not exempt from any other requirements of state or local laws or regulations. Any facility, with respect to which such a certificate is required, shall thereafter be constructed, operated, and maintained in conformity with such certificate and any terms, conditions, and modifications contained therein. A certificate may only be issued pursuant to Chapter 4906. of the Revised Code.

(emphasis added).

Ohio's siting law defines "person" to means "an individual, corporation, business trust, association, estate, trust, or partnership or any officer, board, commission, department, division, or bureau of the state or a political subdivision of the state, or any other entity." Ohio Code Rev. Ann. § 4906.01(A). And "major utility facility" is defined to mean, in relevant part, an "[e]lectric generating plant and associated facilities designed for, or capable of, operation at a capacity of fifty megawatts or more." Ohio Code Rev. Ann. § 4906.01(B)(1)(a).

The Ohio Siting Board "shall not grant a certificate for the construction, operation, and maintenance of a major utility facility, either as proposed or as modified by the board, unless it finds and determines various factors, including "[t]he basis of the need for the facility if the facility is an electric transmission line or gas pipeline;" "[t]he nature of the probable environmental impact;" "[t]hat the facility represents the minimum adverse environmental impact, considering the state of available technology and the nature and

ELECTRONICALLY FILED - 2026 August 3 6:34 PM - SCPSC - Docket # 2026-158-E - Page 31 of 36

economics of the various alternatives, and other pertinent considerations;" and "[t]hat the facility will serve the public interest, convenience, and necessity."[27] Ohio Rev. Code Ann. § 4906.10(A). The Siting Board also must determine that the proposed facility is "consistent with regional plans for expansion of the electric power grid of the electric systems serving this state and interconnected utility systems." Ohio Rev. Code Ann. § 4906.10(A)(4). Though there are some differences between Ohio's law and the Siting Act (such as the smaller 50 MW threshold, and the requirement to determine the need for a facility being limited to transmission lines and gas pipelines), these provisions mirror many of the provisions in the South Carolina Siting Act and thus will be familiar to the Commission.

The Ohio Siting Board has, in fact, interpreted its siting authority to extend to behind-the-meter generation that exceeds its statutory 50 MW threshold, including onsite gas generation at a data center. In 2025, a data center developer applied to the Ohio Siting Board seeking permission to construct a 200 MW gas plant that "would operate behind-the meter where its electric output is dedicated to a single data center customer's [] electric load." *In the Matter of the Application of Socrates North Power Generation Facility for a Certificate of Environmental Compatibility and Public Need for a Gas-Fired Generation Facility Located in Licking County, Ohio*, Case No. 25-188-EL-BGN (Ohio P.S.B. 2025), Opinion and Order (Sept. 18, 2025), at 3.[28] Unlike Valara, the developer in Ohio applied to the Siting Board prior to constructing the facility. *Id.* at 29. The Siting Board determined that the data center developer was "a person under [Ohio Rev. Code Ann. § 4906.01(A)]"

[27] The Ohio law includes other requirements specific to transmission lines and facilities on applicable lands that are inapplicable to the facts of this case and thus omitted here.

[28] The Ohio Siting Board's full order is available at the following link: https://dis.puc.state.oh.us/ViewImage.aspx?CMID=A1001001A25I18B35310D01562.

ELECTRONICALLY FILED - 2026 August 3 6:34 PM - SCPSC - Docket # 2026-158-E - Page 32 of 36

and the proposed facility was "a major utility facility as that term is defined in [Ohio Rev. Code Ann. § 4906.01(B)]." *Id.* at 29. Ultimately, the Siting Board issued a certificate to the developer. *Id.* at 31.

As stated above, Valara's assertion that no state with comparable siting requirements has asserted jurisdiction over an entity like Valara is simply wrong—indeed, a state with a similar statutory regime faced nearly the exact issue presented in this case and came to the same conclusion as Petitioners do here.

F. Unenacted Legislation Is Irrelevant to the Commission's Interpretation of the Siting Act

Valara argues that the Commission should consider the introduction of various data center-focused bills in the 2025-2026 legislation session as evidence that the legislature did not "view[] that authority as already established."[29] As an initial matter, the two data center bills—S. 902 and S. 867—primarily relate to requirements for siting and reporting for *data centers*, not *power plants* constructed at data centers. As Valara's Motion to Dismiss provides, the purpose of S. 902 was to "provide [a] regulatory framework *for data centers*," and S. 867 would "create[] a regulatory process on how you are going to *site a data center*."[30] While those bills would have allowed for behind-the-meter generation at data centers, the main subject of the bills was the siting of the data centers themselves. To be clear, Petitioners do not interpret the Siting Act to only apply to behind-the-meter power plants *at data centers*—our position, supported by the plain language of the Siting Act, is that any person constructing a major utility facility must obtain a Certificate. That includes Valara, irrespective of the fact that they are building a data center.

[29] Motion to Dismiss at 20-23.
[30] Motion to Dismiss at 21 (emphasis added).

ELECTRONICALLY FILED - 2026 August 3 6:34 PM - SCPSC - Docket # 2026-158-E - Page 33 of 36

But even more fundamentally, none of those bills passed. In fact, only one bill even made it out of subcommittee. We would note that legislators also introduced moratoriums on data centers; none of those passed either. *See* H. 5286 and H. 5526. As noted above, the South Carolina Supreme Court has made crystal clear that unenacted legislation can play no role whatsoever in determining the meaning of a statute. CFRE, LLC v. Greenville Cnty. Assessor, 716 S.E.2d 877, 884 (S.C. 2011). Instead, arguments like Valara's are a "folly." "Failed legislative proposals are 'a particularly dangerous ground on which to rest an interpretation of a prior statute. Congressional inaction lacks persuasive significance because several equally tenable inferences may be drawn from such inaction, including the inference that the existing legislation already incorporated the offered change.'" *Id*.

In this instance, the introduction of legislation by one or more legislators—proposed legislation ultimately not adopted by the General Assembly—expressly allowing for onsite generation at data centers could just as easily be read to mean that the legislature decided *not* to allow these facilities. Or perhaps when the legislature did not act on a legislator's proposed bill, the legislature determined no further action was needed because the Siting Act's current jurisdiction covers behind-the-meter generation at data centers if it exceeds 75 MW. But this kind of speculation in which Valara engages does not provide a sound basis for avoiding the clear language of a statute that the *entire* legislature *did* enact. As directed by the Supreme Court, legislation that is introduced, but not adopted, can bear no weight whatsoever on the Commission's interpretation of the Siting Act. The Commission must base its decision on the language of the Siting Act as it now stands.

ELECTRONICALLY FILED - 2026 August 3 6:34 PM - SCPSC - Docket # 2026-158-E - Page 34 of 36

II. PETITIONERS ARE NOT BRINGING AN ENFORCEMENT ACTION AGAINST VALARA, AND NO PRIVATE RIGHT OF ACTION IS REQUIRED TO FILE A PETITION FOR DECLARATORY ORDER OR PETITION FOR A RULE TO SHOW CAUSE WITH THE COMMISSION

Finally, Valara claims that the Petition should be dismissed because the Siting Act has no private right of action. Valara is correct that only ORS may bring *enforcement actions* related to the Siting Act. S.C. Code Ann. § 58-33-320 (providing that any action "to enforce compliance with this chapter or the provisions of a certificate issued hereinunder…shall be brought only by the Office of Regulatory Staff"). However, neither a Petition for Declaratory Order nor a Petition for a Rule to Show Cause is an enforcement action. S.C. Code Ann. § 58-33-320 specifically provides, first, that courts do *not* have jurisdiction over any matter which "was or could have been determined in a proceeding before the commission under this chapter," and second, that nothing in that provision "shall be construed to abrogate or suspend the right of any individual or corporation not a party to maintain any action which he might otherwise have been entitled." *Id.*

Commission regulations provide a process for entities with "grounds of interest in [a] subject matter" to file petitions with the Commission seeking administrative remedies. S.C. Code Ann. Regs. 103-825 provides that "[p]etitions may be submitted to the Commission for any relief, other than for an adjustment of rates and charges, which the Commission is empowered to grant under its statutory authority," and specifies that "[p]etitions which may be filed include: Petition for Rulemaking, *Petition for a Declaratory Order*, Petition to Intervene, Petition for Rehearing or Reconsideration, and *Petition for a Rule to Show Cause*." *Id.* (emphasis added). That is precisely what Petitioners have done here, and the Petition further meets all the requirements for such petitions under

ELECTRONICALLY FILED - 2026 August 3 6:34 PM - SCPSC - Docket # 2026-158-E - Page 35 of 36

Regulation 103-825(A), which provides that "[p]etitions shall state clearly and concisely the petitioner's grounds of interest in the subject matter, the facts relied upon, and the relief sought," and that "[p]etitions shall cite by appropriate reference the statutory provision or other authority relied upon for relief."

Under the Commission's regulations, "[a] Petition for Declaratory Order to determine the applicability of any statute or of any rule or order of the Commission shall state clearly and concisely: (a) A full disclosure of the petitioner's interest; (b) The uncertainty which is the subject of the petition; (c) The statutory provision or other authority involved; (d) A complete statement of the facts prompting the petition." S.C. Code Ann. Regs. 103-825(A)(2).

Petitioners do not disagree that ORS is the only entity that could seek an injunction, penalty, or other enforcement action in state court against Valara. But that is not what Petitioners have done. Petitioners have asked that the Commission *issue an order* affirming its jurisdiction over the project, and to order Valara to *appear* to *explain why* it *should not be required to halt construction*. Both of these are remedies that the Commission may grant under its authority.

For the foregoing reasons, Petitioners respectfully request that the Commission deny Valara's Motion to Dismiss, find that Valara's Power Plant is subject to the Commission's jurisdiction under the Siting Act, and allow this proceeding to move forward as expeditiously as possible.

Respectfully submitted,

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ELECTRONICALLY FILED - 2026 August 3 6:34 PM - SCPSC - Docket # 2026-158-E - Page 36 of 36

Special Agenda Item 4

PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA
COMMISSION DIRECTIVE

ADMINISTRATIVE MATTER	☐	DATE	**August 27, 2026**
MOTOR CARRIER MATTER	☐	DOCKET NO.	**2026-158-E**
UTILITIES MATTER	☑	ORDER NO.	

A FULL COMMISSION ORDER WILL BE ISSUED.

SUBJECT:

DOCKET NO. 2026-158-E - Concerned Citizens of Spartanburg County and Southern Alliance for Clean Energy, Complainants/Petitioners v. Valara Holdings, LLC, Defendant/Respondent- Staff Presents for Commission Consideration Disposition of Initial Threshold Issue and Oral Arguments.

COMMISSION ACTION:

I move the Commission grant the Motion to Dismiss filed by Valara Holdings, LLC. In granting this Motion to Dismiss, I move the Commission find and conclude that the Commission lacks subject matter jurisdiction over the Petition for Declaratory Order, Petition for Rule to Show Cause and Request for Expedited Consideration filed in this Docket. The facility at issue in this proceeding, as proposed by Valara, is not subject to the requirements of the Utility Facility Siting and Environmental Protection Act (the Siting Act), as the facility will not export power generated to the electric grid for public use. I further move the Commission find that the Siting Act does not authorize private parties to initiate an enforcement action with the Commission to compel a third party to obtain a Certificate required by the Siting Act or to halt construction. South Carolina Office of Regulatory Staff (SCORS) has the sole enforcement authority under the terms of the Act, and any action to compel compliance must be brought by SCORS in state court.

A full Order shall be issued outlining the Commission's decision.

PRESIDING: Williams SESSION: Special TIME: 1:00 p.m.

	MOTION	YES	NO	OTHER	
BELSER	☐	☑	☐		Present in Hearing Room
BRITT	☐	☐	☐	Recused	
CASTON	☐	☑	☐		Present in Hearing Room
HENNELLY	☐	☑	☐		Present in Hearing Room
POWERS	☐	☑	☐		Present in Hearing Room
WHITFIELD	☑	☑	☐		Present in Hearing Room

ACCEPTED FOR PROCESSING - 2026 August 28 8:10 AM - SCPSC - 2026-158-E - Page 1 of 2

WILLIAMS ☐ ☑ ☐ Present in Hearing Room

RECORDED BY: J. Schmieding

ACCEPTED FOR PROCESSING - 2026 August 28 8:10 AM - SCPSC - 2026-158-E - Page 2 of 2

BEFORE THE

PUBLIC SERVICE COMMISSION

OF SOUTH CAROLINA

DOCKET NO. 2026-158-E – ORDER NO. 2026-525

SEPTEMBER 14, 2026

IN RE: Concerned Citizens of Spartanburg County and Southern Alliance for Clean Energy, Petitioners v. Valara Holdings, LLC, Respondent.	))))	ORDER GRANTING MOTION TO DISMISS

I. INTRODUCTION

This matter comes before the Public Service Commission of South Carolina (Commission) on the Motion to Dismiss filed by Valara Holdings, LLC (Valara), which sought to dismiss the Petition for Declaratory Order, Petition for Rule to Show Cause Order, and Request for Expedited Relief (Petition) filed by the Concerned Citizens of Spartanburg County and the Southern Alliance for Clean Energy (together, the Petitioners). The central question before the Commission at this stage of the proceeding[1] is jurisdictional and presents an issue of first impression: whether the Utility Facility Siting and Environmental Protection Act (the Act)[2] applies where a private, non-utility entity constructs an electric generating facility that exceeds the megawatt threshold articulated in the Act, but the entity will not supply the electricity generated for public use. For the reasons articulated herein, the Commission grants Valara's Motion to Dismiss.

[1] After the Petition was filed with the Commission, all parties to the Docket agreed that the Petition presented threshold jurisdictional issues; accordingly, the parties agreed to, and the Commission ordered, a two-phased, bifurcated proceeding. The threshold jurisdictional issue would be resolved in the first phase and, if the Commission determined subject matter jurisdiction existed, the second phase would occur under a separate procedural schedule. *See* Order No. 2026-396, issued on July 16, 2026.

[2] S.C. Code Ann. §§ 58-33-10 through -410 (Supp. 2025).

II. PROCEDURAL HISTORY

The Petition was filed with the Commission on June 22, 2026. According to the Petitioners, Valara's construction of its high performance computing center (HPCC) and the approximately 450-megawatt (MW) gas-fired power plant (Power Plant) located on site was "in violation of the clear requirements of South Carolina law." Petition at 1. More specifically, Petitioners requested the Commission issue a declaratory order finding that the Power Plant constitutes a "major utility facility" as defined by the Act in section 58-33-20(2)(a) of the South Carolina Code of Laws and, as such, requires a Certificate of Environmental Compatibility and Public Convenience and Necessity (Certificate) from the Commission prior to continuing construction at the site. *Id.* at 1-2, 6-7, 13-15, paras. 14-28, 44-53.

To address the threshold jurisdictional issue before the Commission in this Docket, Valara and the Petitioners jointly presented a bifurcated procedural schedule wherein the Commission would first address its jurisdiction. The prefiled testimony deadlines and other filing and notice requirements to be addressed in the second proceeding were held in abeyance pending the Commission's determination on the question of jurisdiction. *See* n.1, *supra*. The Commission adopted the procedural schedule proposed by Valara and the Petitioners in Order No. 2026-396, issued on July 16, 2026.

Valara filed a Motion to Dismiss with the Commission on July 27, 2026. Mot. to Dismiss, Docket No. 2026-158-E (July 27, 2026). Valara's motion centered on two primary arguments: 1) that the Commission did not have jurisdiction over a facility that generates electricity solely for its own use, even if the total MW capacity exceeded the threshold for

a major utility facility articulated in the Act; and 2) the Petitioners had no right of private enforcement through the Commission. *Id.* at 1-3.

Petitioners submitted a Response in Opposition on August 3, 2026, which addressed the arguments advanced in Valara's Motion to Dismiss. Opp'n to Mot. to Dismiss, Docket No. 2026-158-E (Aug. 3, 2026). The Office of Regulatory Staff (ORS)[3] submitted a letter outlining its position in this Docket on the same day.[4]

The Commission held oral arguments on Valara's Motion to Dismiss on August 5, 2026. Oral Arg. Tr., Docket No. 2026-158-E (Aug. 5, 2026). Attorneys Frank S. Holleman, III, Kate Mixson, and Susie Carlson represented the Petitioners;[5] attorneys Mitchell Willoughby, Andrew J. D'Antoni, and Charles L.A. Terreni represented Valara; and attorneys Benjamin P. Mustian, Claire E. Benge, and Bailey G. Jackson represented ORS.

III. THE ACT

The Act establishes a certification process for major utility facilities and requires an applicant obtain a Certificate from the Commission prior to commencing construction of a major utility facility. As relevant in the instant case, the Act defines "major utility facility" to include "electric generating plant and associated facilities designed for, or capable of, operation at a capacity of more than seventy-five megawatts." S.C. Code Ann. § 58-33-20(2)(a) (Supp. 2025). The Act defines "person" to include "any individual, group, firm, partnership, corporation, cooperative, association, government subdivision,

[3] ORS is a party of record in all proceedings before the Commission by operation of law. S.C. Code Ann. § 58-4-10(B) (Supp. 2025).
[4] Letter from Bailey G. Jackson, Esquire to the Honorable Jocelyn G. Boyd, Chief Clerk and Executive Director, Public Service Commission of South Carolina (Aug. 3, 2026) (hereinafter referred to as the ORS Letter).
[5] At Petitioners' request, Emily Wyche was excused from attending oral argument. Oral Arg. Tr. 8:8-18.

government agency, local government, municipality, any other organization, or any combination of the foregoing, and shall include the South Carolina Public Service Authority." S.C. Code Ann. § 58-33-20(5) (2015). Finally, the Act defines "public utility" and "utility" together, meaning "any person engaged in the generating, distributing, sale, delivery, or furnishing of electricity for public use." S.C. Code Ann. § 58-33-20(6) (2015).

The Act contemplates a mandatory certification process, which includes certain required showings, exemptions, comparisons and alternative analyses. Pursuant to section 58-33-110 of the South Carolina Code of Laws:

> Certificate required before construction of a major utility facility; transfer and amendment of certificate; exceptions; emergency certificates.
>
> (1) No person shall commence to construct a major utility facility without first having obtained a certificate issued with respect to such facility by the commission. The replacement of an existing facility with a like facility, as determined by the commission, shall not constitute construction of a major utility facility . . . Any facility, with respect to which a certificate is required, shall be constructed, operated, and maintained in conformity with the certificate and any terms, conditions, and modifications contained therein. A certificate may only be issued pursuant to this chapter; provided, however, any authorization relating to a major utility facility granted under other laws administered by the commission shall constitute a certificate if the requirements of this chapter have been complied with in the proceeding leading to the granting of such authorization.
>
> . . .
>
> (8)(a) In seeking a certificate the applicant must provide credible information demonstrating that the facility to be built has been compared to other generation options in terms of cost, reliability, schedule constraints, fuel cost and availability, transmission constraints and costs, ancillary services capabilities, current and reasonably expected future environmental costs and restrictions, that the facility

> supports system efficiency and reliability in light of those considerations, and any other regulatory implications deemed legally or reasonably necessary for consideration by the commission. The commission is authorized to adopt rules for such evaluation of other generation options.

S.C. Code Ann. § 58-33-110(1), (8)(a) (Supp. 2025).

The Act also requires the Commission to consider certain criteria when evaluating whether to grant a Certificate, as articulated in section 58-33-160:

> Decision of Commission
>
> (1) The commission shall render a decision upon the record either granting or denying the application as filed, or granting it upon such terms, conditions or modifications of the construction, operation or maintenance of the major utility facility as the commission may deem appropriate; such conditions shall be as determined by the applicable State agency having jurisdiction or authority under statutes, rules, regulations or standards promulgated thereunder, and the conditions shall become a part of the certificate. The commission must grant a certificate for the construction, operation and maintenance of a major utility facility, either as proposed or as modified by the commission, if it finds and determines that the applicant has shown:
>
> (a) The basis of the need for the facility.
>
> (b) The nature of the probable environmental impact.
>
> (c) That the impact of the facility upon the environment is justified, considering the state of available technology and the nature and economics of the various alternatives and other pertinent considerations.
>
> (d) That the facilities will serve the interests of system economy and reliability, and in the case of generating facilities, will do so considering reasonable available alternatives and their associated costs, risks, and operating attributes.
>
> (e) That there is reasonable assurance that the proposed facility will conform to applicable state and local laws and regulations issued thereunder, including any allowable

> variance provisions therein, except that the commission may refuse to apply any local law or local regulation if it finds that, as applied to the proposed facility, such law or regulation is unreasonably restrictive in view of the existing technology, or of factors of cost or economics or of the needs of consumers whether located inside or outside of the directly affected government subdivisions.
>
> (f) That public convenience and necessity require the construction of the facility.

S.C. Code Ann. § 58-33-160(1) (Supp. 2025).

Finally, the Act vests enforcement authority with ORS:

> Except as expressly set forth in Section 58-33-310, no court of this State shall have jurisdiction to hear or determine any issue, case, or controversy concerning any matter which was or could have been determined in a proceeding before the commission under this chapter or to stop or delay the construction, operation, or maintenance of a major utility facility, except to enforce compliance with this chapter or the provisions of a certificate issued hereunder, and any such action shall be brought only by the Office of Regulatory Staff. Provided, however, nothing herein contained shall be construed to abrogate or suspend the right of any individual or corporation not a party to maintain any action which he might otherwise have been entitled.

S.C. Code Ann. § 58-33-320 (Supp. 2025).

The Commission has promulgated and adopted a regulation implementing the Act; specifically, Commission Regulation 103-304(2) provides:

> No electric system subject to the jurisdiction of the commission shall begin . . . the construction and/or operation of a generating station of more than 75 megawatts, except a hydroelectric generating facility, before receiving a [C]ertificate of Environmental Compatibility and Public Convenience and Necessity in accordance with Sections 58-33-10 et seq., of the Code of Laws of South Carolina, 1976.

S.C. Code Ann. Regs. 103-304(2) (2012).

Finally, the Commission's regulations authorize petitions to be submitted to the Commission "for any relief, other than for an adjustment of rates and charges, which the Commission is empowered to grant under its statutory authority," which include a Petition for a Declaratory Order and a Petition for a Rule to Show Cause. S.C. Code Ann. Regs. 103-825 (2012). A Petition for a Declaratory Order to determine a statute's applicability must clearly and concisely state: a full disclosure of the petitioner's interest; the uncertainty that is the subject of the petition; the statutory provision or other authority involved; and a complete statement of the facts prompting the petition. *See* S.C. Code Ann. Regs. 103-825(A)(2).

IV. DISCUSSION

A. Statutory Construction

The Commission is a creation of the General Assembly. As part of the Commission's enabling legislation, the General Assembly conferred upon the Commission the "power . . . to fix just and reasonable standards, classifications, regulations, practices, and measurements of service to be furnished, imposed, or observed, and followed by every public utility in this State." S.C. Code Ann. § 58-3-140 (Supp. 2025); *see also In re Blue Granite Water Co.*, 434 S.C. 180, 184-85, 862 S.E.2d 887, 889 (2021). The Commission takes on a quasi-judicial role in fulfilling its regulatory functions. *See Utils. Servs. of S.C., Inc. v. S.C. Office of Regulatory Staff*, 392 S.C. 96, 105, 708 S.E.2d 755, 760 (2011). "In this capacity, the Commission sits as the trier of facts, akin to a jury of experts." *Southern Bell Tel. & Tel. Co. v. Public Service Commission*, 270 S.C. 590, 597, 244 S.E.2d 278, 282 (1978); *see also Kiawah Prop. Owners Group v. Public Service Comm'n of S.C.*, 359 S.C. 105, 109, 597 S.E.2d 145, 147 (2004). As the Commission is a creature of statute, it

exercises "only such powers as are conferred, expressly or by reasonably necessary implication, or such as are merely incidental to the powers expressly granted." *Black River Elec. Coop., Inc. v. Pub. Serv. Comm'n, 238 S.C. 282, 292, 120 S.E.2d 6, 11 (1961); accord In Re: Sarah Zito; Alvaro Sarmiento, Jr.; Mark Shinn; and Daniel Bermudez v. Strata Audubon, LLC and Strata Veridian, LLC*, Docket No. 2022-84-WS, Order No. 2022-503, 2022 WL 3098732, at *1 (S.C.P.S.C. July 21, 2022), aff'd, 447 S.C. 405, 926 S.E.2d 795 (Ct. App. 2026).

As the Supreme Court has explained, "[a]ny reasonable doubt of the existence in the Commission of any particular power should ordinarily be resolved against its exercise of the power," and such "asserted powers are not to be derived from mere inference." *Piedmont & N. Ry. Co. v. Scott*, 202 S.C. 207, 223-24, 24 S.E.2d 353, 360 (1943). Consistent with those limits, "[i]t is well-settled that when a matter is raised with the Commission that is beyond the jurisdictional authority granted to the Commission by statute, '[t]he Commission must dismiss a complaint where it lacks subject matter jurisdiction.'" *In Re: Rosia M. Morgan v. Charter Commc'ns, LLC (Spectrum)*, Docket No. 2023-372-C, Order No. 2024-134, 2024 WL 755501, at *2-3 (S.C.P.S.C. Feb. 15, 2024) (quoting Order No. 2020-718, p.5 (Dec. 22, 2020)); *In re: Michael Madden v. Charter Spectrum*, Docket No. 2020-224-C, Order No. 2020-718, 2020 WL 7660662, at *3 (S.C.P.S.C. Dec. 22, 2020) (same).

Through the Act, the General Assembly has delegated siting authority to the Commission. The central question before the Commission in this proceeding presents an issue of first impression; namely, does the Act confer jurisdiction where a private, non-utility entity constructs an electric generating facility that exceeds the megawatt threshold

articulated in the Act, but the entity will not supply the electricity generated for public use. Oral Arg. Tr. 11:23-25, 81:9-19. The Commission's jurisdiction must be premised on clear statutory language that leaves no reasonable doubt as to the Commission's authority. *See Piedmont & N. Ry. Co.*, 202 S.C. at 223-24, 24 S.E.2d at 360.

It is well settled in South Carolina that the "cardinal rule of statutory construction is for the Court to ascertain and effectuate the intent of the legislature." *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) (citing *Charleston County Sch. Dist. v. State Budget and Control Bd.*, 313 S.C. 1, 437 S.E.2d 6 (1993). The first question of statutory interpretation is whether the statute's meaning is clear on its face. *Kennedy v. South Carolina Retirement Sys.*, 345 S.C. 339, 549 S.E.2d 243 (2001). "If a statute's language is plain and unambiguous, and conveys a clear and definite meaning, there is no occasion for employing rules of statutory interpretation and the court has no right to look for or impose another meaning." *Paschal v. State Election Comm'n*, 317 S.C. 434, 436, 454 S.E.2d 890, 892 (1995). However, if the statute is ambiguous, a court "must construe the terms of the statute." *Lester v. South Carolina Workers' Compensation Comm'n*, 334 S.C. 557, 514 S.E.2d 751 (1999).

Accordingly, the first determination before the Commission is whether the Act contains any ambiguity. Section 58-33-110(1) of the Act states that no person shall commence to construct a major utility facility without first having obtained a Certificate as issued by the Commission. However, as the Supreme Court of South Carolina determined in *Hodges*, the cardinal rule of statutory construction is to effectuate the intent of the legislature. It is well settled in South Carolina jurisprudence that if a statute is susceptible

to two reasonable interpretations, it is ambiguous. *South Carolina Dept. of Social Services v. Lisa C*, 80 S.C. 406, 416, 669 S.E.2d 647, 652 (Ct.App. 2008).

In the instant case, it is unclear whether the General Assembly intended "person" as defined in section 58-33-20(5) to apply to private self-generators who do not intend to place the power generated on the electric grid such that they must seek a Certificate before commencing construction. The parties advanced two interpretations, and both interpretations are reasonable. The statute could be interpreted to exclude from the Commission's jurisdiction a private self-generator whose generating facility, while exceeding the threshold established in the Act, does not place the power generated onto the grid for retail customers. Alternatively, the statute could be interpreted to subject a private self-generator to the Commission's jurisdiction because, while the generating facility does not place power onto the grid for retail customers, "person" is broadly defined under the Act.[6] Therefore, because the statute is susceptible to two reasonable interpretations, the statute is ambiguous as applied to private self-generators where the electricity generated will not be placed onto the electric grid.

Having made the determination that the statute is ambiguous, the Commission must turn to construing the terms of the statute, striving to effectuate the intent of the legislature. *Wade v. Berkeley County*, 348 S.C. 224, 229, 559 S.E.2d 586, 588 (2002); *Kennedy v. S.C. Ret. Sys.*, 345 S.C. 339, 348, 549 S.E.2d 243, 247 (2001) (finding that where the plain language of the statute lends itself to two equally logical interpretations, the court "must apply the rules of statutory interpretation to resolve the ambiguity and to discover the intent

[6] Oral Arg. Tr. 120:21-24 ("So we may have a disagreement about what does the law mean – and that's fair, right? Like this is what y'all are here for. This is what we do all the time."), 122:10-11 (". . . but there's this dispute about what does the statute mean?"); *see also* Tr. 139:17-22.

of the General Assembly."); *see also Hodges*, 341 S.C. at 85, 533 S.E.2d at 581. "All rules of statutory construction are subservient to the one that the legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in light of the intended purpose of the statute." *Broadhurst v. City of Myrtle Beach Election Comm'n*, 342 S.C. 373, 380, 537 S.E.2d 543, 546 (2000).

Petitioners contended that the Act confers the Commission with jurisdiction over Valara's Power Plant based on the word "person" as used in section 58-33-110(1) of the Act, as the term is defined in section 58-33-20(5). ORS takes a similar position. Based on the word "person" as it appears in that section, Petitioners argue that the Commission's jurisdiction under the Act reaches any electrical generation exceeding the statutory threshold. Courts in South Carolina considering statutory construction on appeal have determined that the statute "must be read as a whole and sections which are part of the same general statutory law must be construed together and each one given effect." *CRFE, LLC v. Greenville Cnty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011) (quoting *S.C. State Ports Auth. V. Jasper Cnty.*, 368 S.C. 388, 398, 629 S.E.2d 624, 629 (2006). "We therefore should not concentrate on isolated phrases within the statute." *Id.* Instead, the statute must be read "as a whole and in a manner consonant and in harmony with its purpose."

Concentrating on the word "person" in section 58-33-110(1) ignores that the certification proceeding, and the attendant findings and determinations the Commission must make, examine the impact of the proposed major utility facility on the public. *See* S.C. Code Ann. § 58-33-160(1)(a), (d), (e), and (f).

In a proceeding brought pursuant to the Act, the Commission must determine – based on the record –whether the applicant has shown the basis of the need for the facility. S.C. Code Ann. § 58-33-160(1)(a) (Supp. 2025). The evidence presented to the Commission, and the Commission's evaluation of the "need" for the facility is public-centered; that is, whether the public purportedly requires the major utility facility proposed.[7] For the purposes of this Docket, the proposed Power Plant will not serve retail customers, will not add energy or capacity to satisfy an integrated resource plan presented to the Commission, and it is not placing the electricity generated on the grid for public use. Oral Arg. Tr. 44:21-46:3. The Commission must also evaluate the evidence presented in a proceeding brought pursuant to the Act to determine whether the proposed major utility facility will serve the interests of system economy and reliability, and – if a generating facility – it will do so considering reasonable available alternatives and their associated costs, risks, and operating attributes. S.C. Code Ann. § 58-33-160(1)(d) (Supp. 2025). In the current case, a private entity is constructing a facility that exceeds the statutory

[7] *See, e.g., In Re: Joint Application of S.C. Pub. Serv. Auth. (Santee Cooper) & Dominion Energy S.C., Inc. for a Certificate of Env't Compatibility & Pub. Convenience & Necessity for the Constr. & Operation of an Advanced Class Combined Cycle Generating Plant & Associated Facilities in Colleton Cnty., S.C., Pursuant to S.C. Code Ann. § 58-33-10 et seq.*, Docket No. 2025-323-E, Order No. 2026-350, 2026 WL 1750805, at *15-25 (S.C.P.S.C. June 12, 2026) (granting a CECPCN where population, industrial, and commercial growth demonstrated an increased demand on the public electrical demands and supported the need for the project to replace outdated generation stations); *In Re: Application of S.C. Pub. Serv. Auth. (Santee Cooper) for a Certificate of Env't Compatibility & Pub. Convenience & Necessity for the Constr. & Operation of the Jefferies - Cypress 230kV Line & Cypress - Carnes Crossroads 230kV Line & Associated Facilities Pursuant to S.C. Code Ann. § 58-33-10 et seq., & Request to Proceed with Initial Clearing & Constr., S.C. Code Ann. § 58-33-110(7)*, Docket No. 2025- 57-E, Order No. 2025-454, 2025 WL 2124223, at *9-10 (S.C.P.S.C July 25, 2025) (finding need and public convenience and necessity based on the project's role in providing reliable electric service to an industrial customer and supporting system requirements); *In Re: Application of S.C. Pub. Serv. Auth. (Santee Cooper) for a Certificate of Env't Compatibility & Pub. Convenience & Necessity for the Constr. & Operation of a Steam Turbine Generator & Associated Facilities as Part of the Combined Cycle Conversion Project at Its Rainey Generating Station Near Iva, S.C., Pursuant to S.C. Code Ann. § 58-33-10 et seq.*, Docket No. 2024-264-E, Order No. 2025-137 (S.C.P.S.C. Mar. 4, 2025) (finding need for additional generation capacity to meet the utility's system load forecast).

threshold, but the proposed facility will be limited to private generation and will not export the electricity generated to the system. Oral Arg. Tr. 29:24-30:2, 49:22-25. The Commission must further evaluate and determine if the "public convenience and necessity require [the facility's] construction." S.C. Code Ann. § 58-33-160(1)(f) (Supp. 2025). An applicant must also provide findings concerning generation alternatives, transmission constraints, ancillary services, and "system efficiency and reliability," parameters that are important for maintaining stability for the public grid. S.C. Code Ann. § 58-33-110(8)(a) (Supp. 2025). Exercising jurisdiction to apply these provisions to a self-generator would lead to the Commission evaluating whether a private self-generator is "needed" by the public, whether it supports "system economy," and whether it serves "public convenience." To exercise jurisdiction over the proposed Power Plant would improperly detach the statutory criteria from the Commission's purpose: the Commission would be required to evaluate a private, behind-the-meter facility as though it were a public utility resource built to meet public load. Accordingly, the Commission's jurisdiction under the Act does not reach this proposed facility, as it will not be furnishing the electricity generated for public use.

During oral argument, counsel for ORS noted that there is no definition for public use in the Act. Oral Arg. Tr. 124:15-24. In reviewing the statute, it is correct that the General Assembly did not include a definition for "public use" within the statutory text; however, the Supreme Court of South Carolina has previously addressed what constitutes public use. For example, the Supreme Court of South Carolina was asked to construe the definition of a "public utility" on appeal, and the court's holding in that case made ancillary findings as to what constitutes operating for public use. *Anchor Point, Inc. v. Shoals Sewer Co.*, 308

S.C. 422, 418 S.E.2d 546 (1992). One of the questions on appeal in *Anchor Point* was whether Shoals Sewer Co. was a "public utility" as defined by S.C. Code Ann. § 58-5-10(4) (2015). In that section of the South Carolina Code, "public utility" includes "every corporation and person delivering natural gas distributed or transported by pipe, and every corporation and person furnishing or supplying in any manner heat (other than by means of electricity), water, sewerage collection, sewerage disposal, and street railway service, or any of them, *to the public, or any portion thereof,*[8] *for compensation*[.]" S.C. Code Ann. section 58-5-10(4) (2015) (emphasis added). In addressing the question of whether Shoals Sewer Co. was a "public utility," the Supreme Court of South Carolina noted that South Carolina had no case law interpreting these sections, but several other jurisdictions had construed the term. *Anchor Point*, 308 S.C. at 426. The court stated that whether a utility operates for public use depends on the character and extent of the use. *Id.* (citing *In re South Jersey Gas Co.*, 116 N.J. 251, 561 A.2d 561 (1989)). Additional factors include whether the public can enjoy the utility by permission only or whether the utility is willing to serve the entire public within its service area. *Anchor Point*, 308 S.C. at 426. The analysis is fact-specific, given the particulars of each case. *Id.*

The Commission acknowledges that the question in *Anchor Point* and the instant case arise under two different chapters; however, the court did address what constitutes operating for public use in that case. Applying the *Anchor Point* analysis to the case at bar

[8] The statute defines "public or any portion thereof" means "the public generally, or any limited portion of the public, including a person, private corporation, municipality, or any political subdivision of the State for which the service is performed or to which the commodity is delivered and whenever such corporation or person performs a service or delivers a commodity to the public, or any portion thereof, for which compensation is required such corporation or person is hereby declared to be a public utility subject to the jurisdiction and regulation of the Public Service Commission[.]" S.C. Code Ann. section 58-5-10(5) (2015).

supports the conclusion that the Commission lacks subject matter jurisdiction as applied to Valara's Power Plant, as the facility will not directly furnish or sell electricity generated by the Power Plant to the grid, or otherwise furnish or sell the electricity generated to any third-party for use by retail customers. Valara's proposed Power Plant is designed as a private, behind-the-meter facility that will self-generate electricity. Moreover, the facility will not export or otherwise sell or furnish electricity to the grid or to a third-party entity for eventual use by electric retail customers. Oral Arg. Tr. 14:25-15:10, 26:9-19, 43:1-15; *see also* Aff. of M. Johnson at paras. 8-9, 13-16. In construing the Act as a whole, along with the Supreme Court of South Carolina's *Anchor Point* analysis, the Act provides a certification process for major utility facilities, as defined therein, that generate or furnish electricity for public use. To expand the Commission's jurisdiction to apply to private generation facilities that do not generate or furnish electricity for public use would be improper and would not effectuate the intent of the General Assembly.

Support for this conclusion may also be found in the Commission's regulations implementing the Act, which contain an inherent public use component. S.C. Code Ann. Regs. 103-304 (2012); *see also* S.C. Code Ann. Regs. 103-302(6) (defining "electrical utility" to exclude a person, corporation, special purpose district or municipality furnishing electricity only to himself or itself, their resident employees or tenants when such current is not resold or used by others), S.C. Code Ann. Regs. 103-302(5) (defining "electric system" as an electrical utility, electric supplier, utility, electric cooperative, public utility district, governmental body or agency, including consolidated political subdivisions, or another person or corporation supplying electric service to the public.). Upon review, there is no evidence in the record to suggest that the Commission's regulation implementing the

Act presents an irreconcilable conflict with the statutory text of the Act itself. It would, therefore, be antithetical to the Commission's own regulations to deny the Motion to Dismiss where the regulation also clearly contemplates that the facility to be constructed must supply or furnish the electricity generated to the public. The Commission's regulation implementing the Act clearly excludes an entity that will be furnishing electricity to itself, even though the facility exceeds the statutory threshold.

The Commission's conclusion also aligns with its past orders and decisions in cases where the Commission was asked to examine the language of the Act to determine its applicability. In *Pine Gate Renewables, LLC & Catalina Solar, LLC*, the Commission addressed whether the Act's generation threshold should be measured by a facility's direct current (DC) nameplate capacity or by the alternating-current (AC) output the facility could deliver to the electric grid. Order No. 2023-906, Docket Nos. 2023-38-E and 2023-39-E, (S.C.P.S.C. Dec. 28, 2023). The Commission concluded that "[a] major utility facility's megawatt rating is determined by the designed output of the electric generating plant," and that rating is premised on the electric generating plant's ability *to deliver "power to the electric grid." Id.* at 114-15, 128 (emphasis added). Applying that rule, the Commission reached the conclusion that a facility with a DC nameplate capacity exceeding 100 MW was not subject to the Act because that facility used inverters that converted their grid-deliverable output to 74.97 MW AC. *Id.* at 20-21, 129. Applying the Commission's holding in *Pine Gate* to the instant case results in the following conclusion: if a facility capable of generating more than the statutory threshold is not subject to the Act when it delivers less than statutory threshold for generation to the grid, then a private self-generator that cannot export any power to the grid results in a lack of jurisdiction for the Commission.

Concluding that the Commission lacks jurisdiction over the proposed facility in the instant case also aligns with prior cases brought pursuant to the Act where the applicant seeking a Certificate was a private entity. Recently, SR Cordova, LLC (Cordova) sought a Certificate from the Commission for the construction and operation of a 100 MW solar photovoltaic generating facility in Orangeburg County. Addressing need for the facility pursuant to section 58-33-160(1) of the Act, Cordova noted an executed power purchase agreement (PPA) with Central Electric Power Cooperative, Inc. (Central), whereby the facility proposed by Cordova would sell the energy, capacity, and renewable energy certificates to Central. Upon purchasing the energy, Central would distribute it to one of the cooperative's customers.[9]

Similarly, Kingstree East 230 LLC (Kingstree) sought a Certificate from the Commission for the construction and operation of a 249 MW solar photovoltaic generating facility in Williamsburg County. Addressing need for the facility pursuant to section 58-33-160(1) of the Act, a witness testified that Kingstree was taking part in a solar energy request for proposal (RFP) issued by the South Carolina Public Service Authority (Santee Cooper). Accordingly, Kingstree would sell its output by being selected in an RFP or through negotiating a power purchase agreement.[10]

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[9] Order No. 2026-165 at 11-14, Docket No. 2025-276-E, *Application of SR Cordova, LLC for a Certificate of Environmental Compatibility and Public Convenience and Necessity for the Construction and Operation of a 100 MW Solar Facility in Orangeburg County, South Carolina Pursuant to S.C. Code Ann. § 58-33-110 et seq., and Request to Proceed with Initial Construction Work Pursuant to S.C. Code Ann. § 58-33-110(7)* (Mar. 26, 2026) (internal citations omitted).

[10] Order No. 2025-124 at 21-27, Docket No. 2024-203-E, Application of Kingstree East 230 LLC for a Certificate of Environmental Compatibility and Public Convenience and Necessity for the Construction and Operation of a 249 MWac Solar Facility in Williamsburg County, South Carolina Pursuant to S.C. Code Ann. § 58-33-10 et. seq., and Request to Proceed with Initial Construction Work, S.C. Code Ann. § 58-33-110(7) (Feb. 20, 2025) (internal citations omitted).

In another case brought pursuant to the Act in 2022, SR Lambert I, LLC and SR Lambert II, LLC (SR Lambert entities) sought a Certificate from the Commission to construct and operate two 100 MW solar photovoltaic generating facilities in Georgetown County. In response to the 2020 Integrated Resource Plans published by Santee Cooper and Central, Santee Cooper issued an RFP seeking written proposals to develop and sell output from the solar photovoltaic projects to both Santee Cooper and Central. The SR Lambert entities' proposal was among those selected to be developed.[11] In each case, the applicant seeking a Certificate was a private entity and the facility to be built exceeded the statutory threshold of the Act. However, unlike the instant case, SR Cordova, Kingstree, and the SR Lambert entities were going to sell the energy and/or capacity generated to third-parties for ultimate use by customers; or, stated plainly, for public use.

The final analytical step in construing the terms of the statute is to determine whether the Commission's statutory interpretation leads to an absurd result. When applying the plain meaning rule of statutory construction in South Carolina, courts have held that "[h]owever plain the ordinary meaning of the words used in a statute may be, the courts will reject that meaning, when to accept it would lead to a result so plainly absurd that it could not possibly have been intended by the Legislature, or would defeat the plain legislative intention; and if possible will construe the statute so as to escape the absurdity

[11] Order No. 2022-712(A), Docket No. 2022-93-E, Application of SR Lambert I, LLC for a Certificate of Environmental Compatibility and Public Convenience and Necessity for the Construction and Operation of a 100 MW Solar Facility in Georgetown County, South Carolina Pursuant to S.C. Code Ann. § 58-33-10 et. seq., and Request to Proceed with Initial Construction Work, S.C. Code Ann. § 58-33-110(7), and Docket No. 2022-97-E, Application of SR Lambert II, LLC for a Certificate of Environmental Compatibility and Public Convenience and Necessity for the Construction and Operation of a 100 MW Solar Facility in Georgetown County, South Carolina Pursuant to S.C. Code Ann. § 58-33-10 et. seq., and Request to Proceed with Initial Construction Work, S.C. Code Ann. § 58-33-110(7) (Feb. 4, 2026).

and carry the intention into effect." *State ex. rel. McLeod v. Montgomery*, 244 S.C. 308, 314, 136 S.E.2d 778, 782 (1964) (quoting *Stackhouse v. Rowland*, 86 S.C. 419, 422, 68 S.E. 561, 562 (1910). To construe the Act to exercise jurisdiction over facilities that may exceed the statutory threshold but do not provide any public use would artificially, and improperly, expand the Commission's purview. Tr. 176:23-177:20, 182:16-185:23. To exercise jurisdiction over entities constructing facilities that will not be for a public use results in an absurdity that warrants applying this rule of statutory construction. *See* Tr. 98:9-23, 100:9-102:10.

To be clear, the Commission's conclusion in this Docket does not free Valara from regulatory oversight. In fact, Valara is required to apply to the South Carolina Department of Environmental Services for air quality permits, as well as complying with local land-use regulations. Oral Arg. Tr. 52:14-20. Rather, the Commission's conclusion applies the statute to a novel legal issue involving the Commission's subject matter jurisdiction.

B. Private Enforcement Mechanism

While the Commission concludes that dismissing the Petition is proper under the statutory construction argument, we also take this opportunity to address the second ground Valara advanced for dismissing the Petition; namely, that the Petitioners were impermissibly using the Petition as a private enforcement action. The Petition requested the Commission grant, among other things, the following relief: 1) the Commission to issue an Order for a Rule to Show Cause requiring Valara to appear and explain why it should [not][12] cease ongoing construction at the Site pending the outcome of Petitioners'

[12] There is likely a typographical error in Petition at 16, para. 1 wherein the word "not" may have been inadvertently omitted. *Cf.* Petition at 15, para. 53 ("For these reasons, Petitioners seek an Order for a Rule to Show Cause requiring Valara to appear and explain why it should not cease ongoing construction at the Site

declaratory order proceeding and any subsequent proceeding under the Act; and, 2) the Commission issue a Declaratory Order finding that Valara's proposed Power Plant is a "major utility facility" within the meaning of the Siting Act because it is an electric generating plant capable of operating at a capacity of over 75 MW and therefore must comply with the Act's CECPCN requirements and the Act's prohibition on commencing construction without a CECPCN. Petition at 16, paras. 1-2.

The Act provides that ORS is the only entity that can seek an injunction, penalty, or other enforcement action to compel compliance with the Act, and such action is proper in state court. S.C. Code Ann. § 58-33-320. During oral argument, counsel for Valara characterized the Petition as an enforcement action styled as a Petition for Declaratory Order and Petition for a Rule to Show Cause. Oral Arg. Tr. 17:20-18:6, 166:9-167:21. However, there is no dispute among the parties that only ORS has enforcement authority under the Act. Oral Arg. Tr. 17:13-19, 74:23-75:5; *see also* Opp'n to Mot. to Dismiss at 32-33.

Commission regulations permit Petitions for a Declaratory Order to determine the applicability of any statute, including the applicability of the Act to a proposed facility to be built, and the Commission has considered and made determinations regarding such petitions in the past.[13] The Commission's regulations similarly permit a Petition for a Rule to Show Cause, resulting in the initiation of a proceeding against a person under the Commission's statutory authority. S.C. Code Ann. Regs. 103-825, 103-804(X). The tension

pending the outcome of Petitioners' declaratory order proceeding and any subsequent Siting Act proceeding.").

[13] *See, e.g.*, Order No. 2026-43 (finding that Pinopolis Reliability Project LLC met the requirements of S.C. Code Ann. Reg. 103-825 and properly filed a Petition for Declaratory Order interpreting the term "major utility facility" in the Siting Act).

does not appear to be with the request for a declaratory order determining the Commission's jurisdiction under the Act with respect to the Power Plant, but with the request for a Rule to Show Cause. Oral Arg. Tr. 167:6-23.

The question of whether Petitioners were requesting the Commission issue an order for Valara to halt construction was not resolved at oral argument. Oral Arg. Tr. 17:20-25, 75:1-5, 143:9-13-146:9, 166:24-167:23. Therefore, the Commission takes the opportunity to unequivocally state that while there is ambiguity in this case as to whether Petitioners' request for a Rule to Show Cause requiring Valara to appear and explain why it should not halt construction constitutes an enforcement action, the Act does not authorize private parties to initiate an enforcement action to compel a third party to obtain a Certificate required by the Act or to halt construction. Only ORS has enforcement authority under the terms of the Act, and the proper forum for ORS to initiate an action to compel compliance is in state court.

V. CONCLUSIONS OF LAW

The Commission concludes that it lacks subject matter jurisdiction over the Power Plant as proposed by Valara and, by extension, the Petition filed in this Docket. The Power Plant, as proposed by Valara, is not subject to the requirements of the Act, as the facility will not export the power generated to the electric grid for public use. While the Commission cannot make a determination on the question of whether Petitioners were using the request for a Rule to Show Cause as an enforcement mechanism based on the record presented, the Act does not authorize private parties to initiate an enforcement action with the Commission to compel a third party to obtain a Certificate required by the Act or

to halt construction. ORS has sole enforcement authority under the terms of the Act, and ORS must bring any action to compel compliance in state court.

VI. ORDERING PARAGRAPHS

1. The Motion to Dismiss filed by Valara Holdings, LLC, is hereby granted.

2. Upon granting the Motion to Dismiss, the Petition for Declaratory Order, Petition for Rule to Show Cause Order, and Request for Expedited Relief filed by the Concerned Citizens of Spartanburg County and the Southern Alliance for Clean Energy is dismissed for lack of subject matter jurisdiction.

3. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

PUBLIC SERVICE COMMISSION SOUTH CAROLINA

Justin T. Williams, Chairman
Public Service Commission
of South Carolina

* * * * * * * *

Commissioner Caston, concurring:

I concur with the majority in its decision to grant Valara Holdings, LLC's Motion to Dismiss. However, I disagree with the majority's decision to consider the certification proceeding. Majority Opinion at 11. No application under the Siting Act has been filed yet in this matter, so it is premature to examine the impact of the proposed major utility facility on the public pursuant to S.C. Code Ann. section 58-33-160(1)(a),(d),(e), and (f)." *Id.* Moreover, I believe it is inconsistent with our role, at this stage in the proceedings, to contemplate hypothetical findings and determinations. I simply conclude that the Commission lacks subject matter jurisdiction over the Power Plant as proposed by Valara.

My conclusion is based upon the analysis of a "major utility facility" as set forth in S.C. Code Ann. section 58-33-20(2)(a) (Supp. 2025) in the Commission's decision in *Pine Gate Renewables, LLC & Catalina Solar, LLC* in Order No. 2023-906. *Id.* at 16. As the majority notes in the present case, applying the Commission's holding in *Pine Gate* results in the conclusion that "if a facility capable of generating more than the statutory threshold is not subject to the Act when it delivers less than statutory threshold for generation to the grid, then a private self-generator that cannot export any power to the grid results in a lack of jurisdiction for the Commission." *Id.* at 16. Analysis of the requirements found in section 58-33-160, which an applicant must prove in a Siting Act case, exceeds the jurisdictional question before the Commission. Whether or not an applicant can satisfy those requirements in a *future* proceeding is beyond what the Commission should consider at this point in time.

After carefully considering the definition of a major utility facility as found in S.C. Code Ann. section 58-33-20(2)(a), and the decision the Commission reached in *Pine Gate*, I believe the Commission lacks subject matter jurisdiction over the Power Plant as proposed by Valara, as well as the Petition filed in the present Docket.

Stephen M. Caston
Commissioner, District 3

ELECTRONICALLY FILED - 2026 September 24 1:51 PM - SCPSC - Docket # 2026-158-E - Page 1 of 21

BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2026-158-E

IN RE: Concerned Citizens of Spartanburg County and Southern Alliance for Clean Energy, Complainants/Petitioners v. Valara Holdings, LLC, Defendant/Respondent	)))))))	**PETITION FOR RECONSIDERATION AND/OR REHEARING**

Pursuant to S.C. Code Ann. Regs. § 103-825(4), § 103-854, and S.C. Code Ann. § 58-27-2150, Concerned Citizens of Spartanburg County ("Concerned Citizens") and Southern Alliance for Clean Energy ("SACE") (together, "Petitioners") respectfully petition the Public Service Commission of South Carolina seeking reconsideration and/or rehearing of Order No. 2026-525 (the "Order"), specifically, the Commission's dismissal of Petitioners' Petition for Declaratory Order, Petition for a Rule to Show Cause Motion, and Request for Expedited Relief (the "Petitions") on the grounds that the 460 megawatt ("MW") power plant currently under construction by Valara Holdings, LLC ("Valara") in Spartanburg, SC falls outside the Commission's jurisdiction under the South Carolina Utility Facility Siting and Environmental Protection Act ("Siting Act").[1]

[1] Valara also sought to dismiss the Petitions on the basis that the Siting Act contains no private enforcement mechanism, and that the Petition for a Declaratory Order and Petition for a Rule to Show Cause were enforcement actions that the Siting Act delegated exclusively to the Office of Regulatory Staff. Valara Mot. to Dismiss at 24-28. Order No. 2026-525 appears to find that the Petition for a Declaratory Order is not an enforcement action and is permitted by Commission regulation. Order at 20. The Order does not reach the issue of whether the Petition for a Rule to Show Cause is an enforcement mechanism, instead providing that this issue "was not resolved at oral argument" and that "there is ambiguity in this case as to whether Petitioners' request for a Rule to Show Cause requiring Valara to appear and explain why it should not halt construction constitutes an enforcement action." *Id*. at 21. Because the Commission Order appears to dismiss only the Petitions on statutory construction grounds, and not on this secondary basis, Petitioners do not seek reconsideration on this issue.

ELECTRONICALLY FILED - 2026 September 24 1:51 PM - SCPSC - Docket # 2026-158-E - Page 2 of 21

I. INTRODUCTION AND SUMMARY

The Siting Act provides, in relevant part, that "[n]o *person* shall commence to construct a major utility facility without having first obtained a certificate issued with respect to such facility by the commission." S.C. Code Ann. § 58-33-110(1). The statute defines "person" broadly to include not only utilities, but "*any* individual, group, firm, partnership, [or] corporation," among other entities. The statute defines "major utility facility" to mean an "electric generating plant and associated facilities designed for, or capable of, operation at a capacity of more than seventy-five megawatts." Importantly, there is no dispute in this case that Valara is a "person" under the meaning of the Siting Act, and its planned 460 MW Power Plant clearly exceeds the 75 MW capacity threshold under the Act.

Nevertheless, Commission Order No. 2026-525 concludes that the Siting Act does not apply to Valara, because it is a private, non-utility entity that intends to use the power generated to supply the data center adjacent to the facility rather than supplying the electricity for public use. The Order suffers from three significant errors that warrant reconsideration.

First, the Order fails to provide any analysis or justification for the Commission's determination on a central legal issue in this case, namely, its conclusion that the plain language of the Siting Act is ambiguous such that it may employ other canons of statutory construction. Second, the Commission erred in concluding that the plain language of the Siting Act does not require its application to Valara and its Power Plant. Third, because the Siting Act is clear on its face, the Commission erred in relying on considerations outside

ELECTRONICALLY FILED - 2026 September 24 1:51 PM - SCPSC - Docket # 2026-158-E - Page 3 of 21

the text of the Act, including policy concerns and prior orders addressing different issues, to create limitations that the General Assembly did not enact.

For the reasons set forth below, Petitioners respectfully request that the Commission reconsider Order No. 2026-525.

II. STANDARD OF REVIEW

S.C. Code Ann. § 58-27-2150 provides that "any party to the proceedings may within ten days after service of notice of the entry of the order or decision apply for a rehearing in respect to any matter determined in such proceedings and specified in the application for rehearing." The petition must include (a) the factual and legal issues forming the basis for the petition; (b) the alleged error or errors in the Commission order; and (c) the statutory provision or other authority upon which the petition is based. S.C. Code Ann. Regs. § 103-825(A)(4). To receive rehearing, the petitioner must show that the challenged order is "unlawful or unreasonable." S.C. Code Ann. § 58-27-2340.

"The purpose of the petition for rehearing and/or reconsideration is to allow the Commission the discretion to rehear and/or reexamine the merits of issued orders, pursuant to legal or factual questions raised about those orders by parties in interest, prior to a possible appeal." *In re: South Carolina Electric & Gas Co.*, Order No. 2013-5, at 1-2 (Feb. 14, 2013). Pursuant to S.C. Code Ann. § 58-27-2310, "[n]o right of appeal accrues to vacate or set aside, either in whole or in part, an order of the commission…unless a petition to the commission for a rehearing is filed and refused."

The purpose of a petition for rehearing or reconsideration "is not to present points which lawyers for the losing parties have overlooked or misapprehended," nor is its purpose to have the case "tried a second time." *Kennedy v. S.C. Ret. Sys*., 349 S.C. 531,

ELECTRONICALLY FILED - 2026 September 24 1:51 PM - SCPSC - Docket # 2026-158-E - Page 4 of 21

532, 564 S.E.2d 322, 322 (S.C. 2001). Rather, the purpose of petitions for rehearing or reconsideration is to allow the Commission to identify and correct specific errors and omissions in its orders. A party may not raise issues in a motion to reconsider that could have been presented prior to the decision on the merits or that are raised for the first time in a petition for rehearing. *Kiawah Prop. Owners Grp. v. Pub. Serv. Comm'n of S.C.*, 359 S.C. 105, 113, 597 S.E.2d 145, 149 (S.C. 2004).

The Commission's findings are "presumptively correct, [and] the party challenging the [Commission's] order bears the burden of convincingly proving the decision is clearly erroneous, or arbitrary or capricious, or an abuse of discretion, in view of the substantial evidence of the record as a whole." *Duke Energy Carolinas, LLC v. S.C. Off. of Regul. Staff*, 434 S.C. 392, 407, 864 S.E.2d 873, 881 (S.C. 2021) (quoting *S.C. Energy Users Comm. v. S.C. Pub. Serv. Comm'n*, 388 S.C. 486, 491, 697 S.E.2d 587, 590 (S.C. 2010)). However, questions of statutory interpretation are legal questions that are subject to *de novo* review by the courts, and which courts are free to decide without deference to the agency below. *State v. Taylor*, 436 S.C. 28, 34, 870 S.E.2d 168, 171 (2022) (citing *State v. Alexander*, 424 S.C. 270, 274-75, 818 S.E.2d 455, 457 (S.C. 2018)).

III. PROCEDURAL HISTORY

The core purpose of the Siting Act, which was first enacted in 1971, is to require pre-construction review of major utility facilities to ensure that the need for those facilities is balanced against their environmental impacts. S.C. Code Ann. § 58-33-160(1). As such, the Siting Act, S.C. Code Ann. § 58-33-10 *et seq.*, provides that no person shall commence to construct a "major utility facility" without first receiving a Certificate of Environmental

ELECTRONICALLY FILED - 2026 September 24 1:51 PM - SCPSC - Docket # 2026-158-E - Page 5 of 21

Compatibility and Public Convenience and Necessity from the Commission ("CECPCN"). S.C. Code Ann. § 58-33-110(1).

Petitioners filed the Petitions on June 22, 2026, requesting that the Commission, first, "[i]ssue a Declaratory Order finding that Valara's proposed Power Plant is a 'major utility facility' within the meaning of the Siting Act because it is an electric generating plant capable of operating at a capacity of over 75 MW and therefore must comply with the Act's CECPCN requirements and the Act's prohibition on commencing construction without a CECPCN." Petition at 16. Additionally, Petitioners requested that the Commission, "[o]n an expedited basis, issue an Order for a Rule to Show Cause requiring Valara to appear and explain why it should [not] cease ongoing construction at the Site pending the outcome of Petitioners' declaratory order proceeding and any subsequent Siting Act proceeding." *Id.*

On July 27, 2026, Valara filed its Motion to Dismiss, asserting two grounds for dismissal. First, Valara argued that the Commission lacks jurisdiction over private, behind-the-meter electric generation facilities. Mot. to Dismiss at 10. Second, Valara contended that the Siting Act does not authorize private parties to bring an enforcement action seeking the relief requested in the Petition. *Id.*

On August 3, 2026, Petitioners filed a response in opposition to Valara's Motion to Dismiss. Petitioners' Response refuted the arguments raised by Valara, contending that "[t]he language of Section 58-33-110(1) could not be plainer on its face: any 'person' constructing a 'major utility facility' must obtain a Certificate," Pet'rs' Resp. at 16, and that the Petition was proper because "neither a Petition for Declaratory Order nor a Petition for a Rule to Show Cause is an enforcement action." *Id.* at 32. The same day, ORS also filed a response opposing Valara's Motion to Dismiss.

ELECTRONICALLY FILED - 2026 September 24 1:51 PM - SCPSC - Docket # 2026-158-E - Page 6 of 21

On August 5, 2026, the Commission held oral arguments. On September 14, 2026, it issued Order 2026-525, granting Valara's Motion to Dismiss and holding that it lacks subject matter jurisdiction over private, behind-the-meter generators.

IV. ARGUMENT

The Commission's Order contains three fundamental errors that warrant reconsideration. First, the Order fails to provide any analysis or justification for the Commission's determination on a central legal issue in this case, namely, its conclusion that the plain language of the Siting Act is ambiguous such that it may employ other canons of statutory construction. Second, the Commission erred in concluding that the plain language of the Siting Act does not require its application to Valara and its Power Plant. Third, because the Siting Act is clear on its face, the Commission erred in relying on considerations outside the text of the Act, including policy concerns and prior orders addressing different issues, to create limitations that the General Assembly did not enact.

1. The Order Provides No Legally Permissible Justification for Its Central Conclusion That the Siting Act Is Ambiguous.

The Commission's threshold error was its unsupported conclusion that the Siting Act is ambiguous. Order at 10. "The cardinal rule of statutory construction is to ascertain and effectuate the intent of the [General Assembly]." *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (S.C. 2000). And "[t]he best evidence of legislative intent is the text of the statute." *Creswick v. Univ. of S.C.*, 434 S.C. 77, 82, 862 S.E.2d 706, 708 (S.C. 2021). "The first question to be asked when interpreting a statute is whether the statute's meaning is clear on its face." *Id.* at 82, 708; *see also Kennedy,* 345 S.C. at 346, 549 S.E.2d at 246 (same). "If a statute's language is plain and unambiguous and conveys a clear and definite meaning, there is no need to employ the rules of statutory interpretation, and this Court

ELECTRONICALLY FILED - 2026 September 24 1:51 PM - SCPSC - Docket # 2026-158-E - Page 7 of 21

must apply the statute according to its literal meaning." *Creswick*, 434 S.C. at 81, 862 S.E.2d at 708 (citing *Miller v. Aiken*, 364 S.C. 303, 307, 613 S.E.2d 364, 366 (S.C. 2005)). Where a statute is susceptible to two reasonable interpretations, it is ambiguous. *S.C. Dep't of Social Serv. v. Lisa C.*, 380 S.C. 406, 416, 669 S.E.2d 647, 652 (S.C. Ct. App. 2008). However, "[u]nder the plain meaning rule, this Court has no right to search for or impose another meaning or resort to subtle or forced construction to change the scope of a clear and unambiguous statute." *Creswick*, 434 S.C. at 81–82, 862 S.E.2d at 708; *accord Town of Mt. Pleasant v. Roberts*, 393 S.C. 332, 342, 713 S.E.2d 278, 283 (S.C. 2011); *State v. Sweat*, 386 S.C. 339, 350–51, 688 S.E.2d 569, 575 (S.C. 2010); *Cain v. Nationwide Prop. & Cas. Ins. Co.*, 378 S.C. 25, 29–30, 661 S.E.2d 349, 351–52 (S.C. 2008).

In applying these principles to the instant case, the Order begins by providing a conclusory statement that "it is unclear whether the General Assembly intended 'person' as defined in section 58-33-20(5) to apply to private self-generators who do not intend to place the power generated on the electric grid such that they must seek a Certificate before commencing construction." Order at 10. In making this statement, the Order entirely omits any discussion or textual analysis demonstrating the Commission's rationale for which specific definitions, phrases, or provisions of the Siting Act render the statute ambiguous. Instead, the Order briefly restates the two interpretations advanced by parties and, without discussion or analysis of the statutory text, makes the conclusory finding that both interpretations are reasonable:

> The parties advanced two interpretations, and both interpretations are reasonable. The statute could be interpreted to exclude from the Commission's jurisdiction a private self-generator whose generating facility, while exceeding the threshold established in the Act, does not place the power generated onto the grid for retail customers. Alternatively, the statute could be interpreted to subject a private self-generator to the

ELECTRONICALLY FILED - 2026 September 24 1:51 PM - SCPSC - Docket # 2026-158-E - Page 8 of 21

> Commission's jurisdiction because, while the generating facility does not place power onto the grid for retail customers, "person" is broadly defined under the Act. Therefore, because the statute is susceptible to two reasonable interpretations, the statute is ambiguous as applied to private self-generators where the electricity generated will not be placed onto the electric grid.

Id. at 10.

This brief discussion falls short of the analysis the Commission is required to conduct. Courts "will not accept an administrative agency's decision at face value without requiring the agency to explain its reasoning." "[A] recital of conflicting testimony followed by a general conclusion is patently insufficient to enable a reviewing court to address the issues." *Kiawah Prop. Owners Grp. v. Pub. Serv. Comm'n of S.C.,* 338 S.C. 92, 96, 525 S.E.2d 863, 865 (S.C. 1999) (quoting *Able Commc'ns, Inc. v. S.C. Pub. Serv. Comm'n*, 290 S.C. 409, 411, 351 S.E.2d 151, 152 (S.C. 1986)). Here, that is precisely what the Commission has done—the Order recites both interpretations advanced by the parties to this proceeding, and, without meaningfully engaging with the merits of each argument, or the underlying statutory text, concludes that the statute is ambiguous.

The Order includes only one supporting citation in this discussion—a footnote citing to statements made by counsel for the Office of Regulatory Staff during oral arguments noting that the parties "have a disagreement about what…the law mean[s]" and that there is a "dispute about what…the statute mean[s]." Order at 10 n. 6. While parties to this case presented two differing interpretations of the statute, the law is clear that the Commission may not rely on the existence of such a dispute to conclude that a statute is ambiguous. "A mere disagreement among litigants over the meaning of a statute does not prove ambiguity; it usually means that one of the litigants is simply wrong." *Bank of America Nat. Trust & Sav. Ass'n v. 203 North LaSalle Street P'ship*, 526 U.S. 434, 461

ELECTRONICALLY FILED - 2026 September 24 1:51 PM - SCPSC - Docket # 2026-158-E - Page 9 of 21

(1999) (Thomas J., concurring). The existence of competing litigation positions cannot substitute for the textual analysis that South Carolina law requires. Unfortunately, the Order provides no such analysis.

Assessing the plain language of a statute is the first and most critical step in determining the intent of the legislature. Order No. 2026-525 simply skips this analysis. This is particularly concerning because, in simply stating that both interpretations of the Siting Act are "reasonable," the Commission's Order entirely overlooks a critical distinction between the Parties' interpretations. The interpretation advanced by Petitioners and ORS arises directly from the text of the Siting Act. Under the plain language of the certification provision, "[n]o *person* shall commence to construct a *major utility facility* without first having obtained a certificate." S.C. Code Ann. § 58-33-110(1). The definition of "person" includes organizations—Valara is an organization. *Id.* § 58-33-20(5) The Act defines a "major utility facility" to include "an electric generating plant and associated facilities designed for, or capable of, operation at a capacity of more than seventy-five megawatts." *Id.* § 58-33-20(2)(a). The Power Plant at issue indisputably exceeds that threshold. That statutory mandate is clear, and nothing in these Certification requirements conditions the Commission's jurisdiction on whether the electricity produced is ultimately sold to retail customers or delivered onto the public grid.

In contrast, Valara's purported "interpretation" does not arise from an alternative reading of this text. The Order describes Valara's position as the view that "[t]he statute could be interpreted to exclude from the Commission's jurisdiction a private self-generator whose generating facility, while exceeding the threshold established in the Act, does not place the power generated onto the grid for retail customers." Order at 10. But that

ELECTRONICALLY FILED - 2026 September 24 1:51 PM - SCPSC - Docket # 2026-158-E - Page 10 of 21

interpretation cannot be derived from the certification language itself because those limitations do not appear anywhere in the provisions governing major utility facilities. Instead, to arrive at Valara's conclusion, one must first look beyond the plain language of the Siting Act.

Valara's own briefing confirms this point. Tellingly, neither its Motion to Dismiss nor points made during oral argument advances a *textual* argument that the words "major utility facility" or "person" mean something other than what the statute expressly says. *See, e.g.*, Mot. to Dismiss at 11 (citing Chapters 3 and 27 of Title 58 to argue that the Commission has jurisdiction only over public utilities); 14–15 (discussing CECPCN proceedings); 18–19 (citing the Commission's Order in *Pine Gate*); 20–22 (discussing legislative activity about data centers); 23–24 (citing "persuasive authority" from other states). Nor does Valara identify any actual language in the certification requirement limiting its application to facilities serving the public. Instead, Valara relies on statutory provisions found outside the Act, including provisions defining "public utility" in different regulatory contexts, legislative history, prior commission orders in different contexts, and policy considerations concerning facilities that do not serve retail customers. Those arguments can only be applied if ambiguity first exists, but they cannot be used to manufacture ambiguity where none exists.

The Commission therefore inverted the proper order of statutory construction. South Carolina law requires an adjudicative body to *first* examine the statutory text and apply its plain meaning. *Smith v. Tiffany*, 419 S.C. 548, 555-56, 799 S.E.2d 479, 483 (S.C. 2017) ("Absent an ambiguity, there is nothing for a court to construe, that is, a court should not look beyond the statutory text to discern its meaning."); *Creswick*, 434 S.C. at 81–82,

ELECTRONICALLY FILED - 2026 September 24 1:51 PM - SCPSC - Docket # 2026-158-E - Page 11 of 21

862 S.E.2d at 708. Only where the text is genuinely ambiguous may the decision-maker resort to looking beyond the statutory text with tools such as legislative history, policy considerations, or related statutory provisions. *See Hodges,* 341 S.C. at 85, 533 S.E.2d at 581 ("Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning.").

Here, the Order never identifies any word, phrase, or provision in the certification requirement that is susceptible to two reasonable meanings. Instead, the Commission assumes ambiguity because Valara proposed an interpretation that depends on looking outside the Siting Act's operative text. *See* Order at 10. That is not ambiguity, but a policy argument for reading into the Siting Act limitations that the General Assembly did not include.

The consequences of the Commission's approach are significant. If a party can create ambiguity simply by pointing to other provisions outside the statute that support a different outcome, then no statute's plain language would ever control. Courts and agencies would be free to bypass the text whenever an alternative result could be construed. South Carolina's rules of statutory construction reject that approach. *See Hodges*, 341 S.C. at 85, 533 S.E.2d at 581. The Commission's duty is to apply the words enacted by the General Assembly and determine itself whether Section 58-33-110(1) is ambiguous. The Commission therefore committed legal error by treating Valara's extra-textual policy arguments as evidence of statutory ambiguity. Because the Order identifies no ambiguity in the operative language of the Siting Act itself, the Commission was required to apply the statute according to its plain meaning. Its failure to do so renders the Commission's

ELECTRONICALLY FILED - 2026 September 24 1:51 PM - SCPSC - Docket # 2026-158-E - Page 12 of 21

Order insufficient on its face and the Commission's analysis in the Order—which is based on the premise that the statute *is* ambiguous—legally deficient. As such, the Order warrants reconsideration or rehearing.

2. <u>The Commission Erred In Concluding That the Siting Act Does Not Apply to Valara's Power Plant.</u>

The Commission further erred in concluding that the Siting Act does not apply to the Valara Power Plant, because its interpretation of the Siting Act cannot be reconciled with the statute's plain text. Applying the words chosen by the General Assembly resolves this case. Valara is a "person." S.C. Code Ann. § 58-33-20(5). Its proposed Power Plant is capable of generating far more than seventy-five megawatts. § 58-33-20(2)(A). Under Section 58-33-110(1), no person may commence construction of such a facility without first obtaining a certificate from the Commission. The jurisdictional analysis begins and ends there.

The Siting Act is clear that "[n]o *person* shall commence to construct a *major utility facility* without first having obtained a certificate issued with respect to such facility by the commission." S.C. Code Ann. § 58-33-110(1) (emphasis added). Both "person" and "major utility facility" are clearly defined, and distinct, terms in the Siting Act. A "person" is "any individual, group, firm, partnership, corporation, cooperative, association, government subdivision, government agency, local government, municipality, any other organization, or any combination of any of the foregoing and shall include the South Carolina Public Service Authority." S.C. Code Ann. § 58-33-20(5). "Major utility facility" is defined as "any electric generating plant and associated facilities designed for, or capable of, operation at a capacity of more than seventy-five megawatts." S.C. Code Ann. § 58-33-20(2)(a).

ELECTRONICALLY FILED - 2026 September 24 1:51 PM - SCPSC - Docket # 2026-158-E - Page 13 of 21

The plain language of these definitions when read together with the plain language of S.C. Code Ann. § 58 33-110(1) mandates that no corporation shall construct an electric generating plant and associated facilities designed for, or capable of, operation at a capacity of more than 75 megawatts without first having obtained a certificate issued with respect to such facility by the Commission. Critically, both of these terms are discretely defined in quotation marks to indicate that other definitions may not be imported to change the meanings of these terms. *See Alnylam Pharms., Inc. v. Moderna, Inc.*, 138 F.4th 1326, 1333–34 (Fed. Cir. 2025) ("[T]he term to be defined . . . is set off in quotation marks" and once a definition is expressly stated, "a high threshold would have to be met before finding a departure from that controlling definition."); *Colautti v. Franklin*, 439 U.S. 379, 392 n.10 (1979) ("[A] definition which declares what a term 'means' excludes any meaning that is not stated."); *Meese v. Keene*, 481 U.S. 465, 484 (1987) (declaring that it is "axiomatic that the statutory definition of the term excludes unstated meanings of that term"); *Aremu v. Dep't of Homeland Sec.*, 450 F.3d 578, 582 (4th Cir. 2006) ("[W]here Congress has used a statutorily defined term in a manner seemingly inconsistent with the term's statutory definition, an interpreting body is not entitled to adopt the seemingly inconsistent use of the term in lieu of the term's express statutory definition.").

The Commission's Order goes far beyond this plain language definition to hold that the Siting Act excludes private, behind-the-meter generators like Valara. This is unlawful because it grafts an entirely new exclusion for private generators onto the Siting Act's plain language. To be clear, nothing in the definition of "major utility facility" distinguishes between facilities that sell electricity to the public and facilities that consume the electricity onsite. Nor does the definition require that a generating plant be interconnected with the

ELECTRONICALLY FILED - 2026 September 24 1:51 PM - SCPSC - Docket # 2026-158-E - Page 14 of 21

grid or participate in electricity markets. Instead, the statute focuses solely on whether the facility is an electric generating plant and whether it exceeds the 75 MW threshold established by the General Assembly. Indeed, this interpretation requires adding language into its definition of the term "major utility facility." Had the legislature intended the definition of "major utility facility" to only include facilities furnishing electricity for public use, it could have done so by providing that clear three-word limitation in the definition; it did not, and the Commission may not depart from the plain language of the statute to read in such a limitation.[2] The Commission therefore erred by looking beyond the plain language of the Siting Act to rewrite a defined term.

3. <u>Because the Siting Act Is Clear on Its Face, the Commission Unlawfully Went Beyond the Text of the Statute.</u>

The Commission further erred by basing its decision primarily on factors, such as other statutory provisions, policy considerations, and prior Commission orders, rather than the plain language of the statute.

a. The CECPCN requirements apply to private self-generators.

The Commission erred in relying on the Certificate application and approval requirements to conclude that the Siting Act does not apply to private self-generators. *See* Order at 12–13. That conclusion rests on two errors. First, it elevates policy concerns over the statutory text, effectively rewriting the Siting Act to include limitations the General

[2] In fact, Petitioners provided evidence in its response to Valara's Motion to Dismiss showing that prior to the Siting Act's passage, South Carolina had an earlier siting law which required *electrical utilities* to obtain a certificate before constructing generating facilities used to furnish electric service to the public. When the Siting Act was passed in 1971, the legislature expanded the earlier scope of this law to instead require that "any person"—not just an "electrical utility"—constructing a "major utility facility"—without the limitation of "for the furnishing of electric service to the public"— first obtain a Certificate. Resp. to Mot. to Dismiss at 19-20. The Order entirely omits this argument in its discussion.

ELECTRONICALLY FILED - 2026 September 24 1:51 PM - SCPSC - Docket # 2026-158-E - Page 15 of 21

Assembly did not enact. Second, it relies on the Certificate criteria to infer a "public use" requirement that appears nowhere in the Act's operative provisions.[3]

As the Commission's Order notes, the Siting Act requires that an applicant file an application with the Commission that contains a description of the major utility facility and its location, a summary of any studies the applicant has conducted regarding the environmental impact of the facility, a statement explaining the need for the facility, and any other information the Commission requires. S.C. Code Ann. § 58-33-120. The Commission must grant a Certificate if it finds and determines that an applicant has shown the basis of the need for the facility, the nature of the probable environmental impact, that the impact of the facility upon the environment is justified, considering the state of available technology and the nature and economics of the various alternatives and other pertinent considerations, and that the facilities will serve the interests of system economy and reliability in light of those considerations. *Id.* § 58-33-110(8)(a).

The Commission nevertheless concluded that exercising jurisdiction over Valara's proposed generating facility "would improperly detach the statutory criteria from the Commission's purpose" because it would require the Commission "to evaluate a private, behind-the-meter facility as though it were a public utility resource built to meet public load." Order at 13. Not so. Nothing in the Act's certification criteria requires the Commission to determine whether the public itself requires the proposed facility. Nor does

[3] As the Commission notes, the General Assembly did not define "public use" anywhere in the statutory text. Order at 13. To supply a definition, the Commission relies on *Anchor Point, Inc. v. Shoals Sewer Co.*, 308 S.C. 422, 418 S.E.2d 546 (1992). That reliance is misplaced. The issue in this case is one of statutory interpretation, and the Commission's analysis goes beyond the text enacted by the General Assembly. Moreover, as the Commission acknowledges, *Anchor Point* addressed the definition of "public utility" under an entirely different statutory provision, S.C. Code Ann. § 58-5-10(4), and any discussion of "public use" was merely "ancillary" to the Court's analysis. Order at 13-14. Accordingly, *Anchor Point* offers little guidance on the question presented here.

ELECTRONICALLY FILED - 2026 September 24 1:51 PM - SCPSC - Docket # 2026-158-E - Page 16 of 21

the Act require the Commission to treat every applicant as a public utility. The statute requires only that the Commission evaluate the facility against the criteria enacted by the General Assembly.

Indeed, applying those criteria to a private self-generator would further, rather than frustrate, the purposes of the Siting Act. The first two factors that the Commission must evaluate under Section 58-33-160 are the "basis of the need for the facility" and the "nature of [its] probable environmental impact." Those inquiries are readily applicable to a behind-the-meter generating facility. A private applicant can submit evidence explaining why the facility is necessary for its operations, expected demand, reliability requirements, economic justifications, or other operational needs. Likewise, the Commission can evaluate the environmental impacts of the facility in exactly the same manner it would for any other generating plant. Nothing in the statutory language suggests that these inquiries become impossible merely because the electricity will be consumed on-site rather than sold to the public.

Typically, regulated utilities have often relied on Integrated Resource Plans to establish need in Siting Act proceedings. But that reflects the type of applicant that has traditionally sought Certificates, not a limitation imposed by the statute itself. The Act requires a showing of need; it does not prescribe a single method of proving that need, nor does it restrict the Commission to considering only utility planning documents. The Commission often evaluates different forms of evidence in these proceedings and is fully capable of determining whether a private applicant has adequately demonstrated the need for a large generating facility.

ELECTRONICALLY FILED - 2026 September 24 1:51 PM - SCPSC - Docket # 2026-158-E - Page 17 of 21

The third and fourth factors the Commission must weigh are whether "the impact of the facility upon the environment is justified, considering the state of available technology and the nature and economics of the various alternatives and other pertinent considerations," and whether the applicant has adequately shown that "the facilities will serve the interests of system economy and reliability," again considering reasonable alternatives and associated risks. S.C. Code Ann. § 58-33-106(1)(c)-(d). Here, the Commission would evaluate evidence in the proceeding about alternatives, such as alternative locations or configurations, that could lower the environmental, system, or other public impacts from the facility.

Ultimately, the Commission's reasoning assumes that because the certification criteria have historically been applied to utility-owned generating plants or privately-owned facilities which sell power to the grid, the legislature must have intended the Act to reach only those facilities. But that assumption unlawfully places policy considerations into the interpretation of an unambiguous statute. The statutory text determines the scope of the Siting Act, and the Siting Act clearly, and broadly, requires a Certificate before construction of a "major utility facility." Once a facility falls within that definition, the Commission must apply the statutory criteria as written. It cannot narrow the statute because it believes that applying those criteria to a particular type of applicant would be inconsistent with past practice. Those are policy judgments for the legislature, not grounds for disregarding the statute's plain language.

b. The Commission's reliance on *Pine Gate* is misplaced.

The Commission's Order also improperly broadens its decision in *Pine Gate Renewables, LLC & Catalina Solar, LLC*, Order No. 2023-906 (Dec. 28, 2023), to mean

ELECTRONICALLY FILED - 2026 September 24 1:51 PM - SCPSC - Docket # 2026-158-E - Page 18 of 21

that "if a facility capable of generating more than the statutory threshold is not subject to the Act when it delivers less than statutory threshold for generation to the grid, then a private self-generator that cannot export any power to the grid results in a lack of jurisdiction for the Commission." Order at 16. The concurring opinion from Commissioner Caston similarly relies on the *Pine Gate* decision. Order at 23. However, basing Siting Act applicability on whether a generating plant is connected to the grid, rather than the capacity it is designed to produce, is inconsistent with the Commission's final order in the *Pine Gate* proceeding and contrary to the Siting Act's plain language. *See Kiawah Dev. Partners, II v. S.C. Dep't of Health & Env't Control*, 411 S.C. 16, 32, 766 S.E.2d 707, 717 (2014) (noting courts will not defer to an agency's interpretation of its own statute or regulation where that interpretation is unreasonable or inconsistent with the plain language of the statute).

The central issue in *Pine Gate* was whether the Siting Act's 75 MW jurisdictional threshold, when applied to solar facilities, should be interpreted and applied as 75 MW direct current (DC) capacity or 75 MW alternating current (AC) capacity. Order No. 2023-906, at 2. In Order No. 2023-906, the Commission focused on whether the capacity of a solar "electric generating plant" should be based on its solar panels alone (its DC capacity) or the solar panels plus the inverters (its AC capacity). The Commission found that "the seventy-five [MW] capacity threshold requirement to trigger the Siting Act should not be interpreted as either AC or DC. Instead, a major utility facility's megawatt rating is determined by the *designed output* of the electric generating plant." *Id.* at 46 (emphasis added). Because "direct current produced power cannot be put directly into the electric system or grid which is based on alternating current (AC)," *id.* at 117, the Commission concluded that solar PV panels and its inverters, together, constitute the "electric generating

ELECTRONICALLY FILED - 2026 September 24 1:51 PM - SCPSC - Docket # 2026-158-E - Page 19 of 21

plant," rather than the solar PV panels alone. *Id.* at 117–18. The Commission provided that "associated facilities" include "substations or transformers, which connect the generating plant to the electric transmission system," *id.* at 3, but that a "common-sense reading of the statute requires the Commission to evaluate the capacity of the 'electric generating plant' as a whole and not to focus on a single component of the electric generating plant, such as the solar PV modules." *Id.* at 117. With respect to the Pine Gate facility, the Commission concluded that "[i]t is the PV modules in combination with the inverters working together to deliver a designed, reliable, and maximum amount of megawatt power to the electric system that represents the capacity of the facility." *Id.* at 118. The Commission found that this interpretation was consistent with industry practice, citing testimony discussing how the term "capacity" is a term of art in the electric industry that means "the ability of an electric generating facility to serve load, and that load is AC consumption of power." *Id.* at 3, 77.

In Order No. 2026-525, the Commission incorrectly asserts that *Pine Gate* shows an electric generating plant "capable of generating more than the statutory threshold" could avoid the Siting Act by delivering less power to the grid and therefore concludes that a plant which does not deliver any power to the grid must be outside the Act's jurisdiction. *Id.* at 16. However, *Pine Gate* specifically concludes that a solar facility is *not* capable of generating more usable power than its inverters will allow, and that is why its capacity rating, for purposes of Siting Act applicability, is based on the solar panels and inverters together. And *Pine Gate* provides that the determination of a plant's capacity is based on the components of the generating facility that *produce* usable electricity, not transmit it to end consumers. While the decision does reference the solar plant's "associated facilities,"

ELECTRONICALLY FILED - 2026 September 24 1:51 PM - SCPSC - Docket # 2026-158-E - Page 20 of 21

such as transformers and substations that tie the solar plant to the grid, that is simply because the solar plant in *Pine Gate was* connected to the grid. Whether a behind-the-meter facility would be subject to the Siting Act was not an issue before the Commission in that case, and the Order does not specify that grid connection is required to trigger Siting Act applicability.

Here, unlike in *Pine Gate*, gas plants are not a new technology to which the Siting Act has never been applied—there is no reasonable dispute about whether the gas-fired Power Plant constitutes an electric generating facility, or whether it will have a capacity that exceeds 75 MW. The Power Plant in question is designed for, will operate at, and will be capable of producing approximately 460 MW-AC of usable power to serve load, in this case, the Data Center. Valara is constructing the Power Plant precisely so it can use the power it generates. The language of the Siting Act provides, clearly and unambiguously, that an electric generating plant and associated facilities designed for, or capable of, operation at a capacity of more than seventy-five megawatts requires a Certificate. Both *Pine Gate* and the Siting Act's plain language provide that the Commission should look to the capacity of the electric generating plant, and whether that exceeds 75 MW, in determining whether the Act applies. Because Valara's Power Plant exceeds that threshold, it is a major utility facility under the plain language of the Siting Act, and thus the Commission's Order warrants reconsideration.

V. CONCLUSION

For these reasons, Petitioners request the Commission grant reconsideration and/or rehearing of Order No. 2026-525.

Respectfully submitted,

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ELECTRONICALLY FILED - 2026 September 24 1:51 PM - SCPSC - Docket # 2026-158-E - Page 21 of 21

ELECTRONICALLY FILED - 2026 October 2 2:16 PM - SCPSC - Docket # 2026-158-E - Page 1 of 16

BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2026-158-E

Concerned Citizens of Spartanburg County and Southern Alliance for Clean Energy,	
***Petitioners*,**	**VALARA HOLDINGS LLC'S RESPONSE IN OPPOSITION TO PETITIONERS' PETITION FOR RECONSIDERATION AND/OR REHEARING**
v.	
Valara Holdings LLC,	
***Respondent*.**	

Valara Holdings LLC ("Valara" or "Respondent"), by and through undersigned counsel, respectfully submits this Response in Opposition to the Petition for Reconsideration and/or Rehearing ("Petition for Reconsideration") filed by Concerned Citizens of Spartanburg County and the Southern Alliance for Clean Energy (collectively, "Petitioners"). Petitioners fail to identify any error, change in law, or new evidence requiring reconsideration. Instead, they merely reargue points the Commission already considered and properly rejected in Order No. 2026-525 (Sep. 14, 2026) (the "Order"). Accordingly, the Commission should deny the Petition for Reconsideration.

INTRODUCTION

On September 14, 2026, after extensive briefing and oral argument, the Commission issued Order No. 2026-525 granting Valara's Motion to Dismiss. The Order concluded that the Commission "lacks subject matter jurisdiction over the Power Plant as proposed by Valara and, by extension, the Petition filed in this Docket." Order at 21. The Commission reached this conclusion through a thorough, 24-page analysis that addressed and rejected the arguments Petitioners now seek to relitigate.

ELECTRONICALLY FILED - 2026 October 2 2:16 PM - SCPSC - Docket # 2026-158-E - Page 2 of 16

The Petition for Reconsideration does not identify any error, change in law, or new evidence that would warrant reconsideration under the applicable standard. Instead, Petitioners merely repackage the same arguments they advanced—and the Commission rejected—in their August 3, 2026 Response in Opposition to Valara's Motion to Dismiss ("Motion to Dismiss Opposition") and in their August 12, 2026 Letter Brief ("Letter Brief"). A petition for reconsideration is not a vehicle for expressing disagreement with a decision or for rearguing positions the Commission has already weighed and found wanting.

First, Petitioners contend that the Commission erred in its statutory construction analysis, but the Commission applied the correct interpretive methodology: the Commission examined the statutory text and determined that the General Assembly intended the Utility Siting Act to apply to facilities generating electricity for public use, not to private actors operating behind-the-meter self-generation.[1] ***Second,*** Petitioners repeat the "plain-language" interpretation they offered in their original Petition, but the Order carefully explains why Petitioners' reading is inconsistent with the statute read as a whole and the broader statutory framework. The General Assembly granted the Commission jurisdiction to regulate only the siting of facilities furnishing more than 75 MW of electricity and *transmitting electricity onto the public grid for public use*, not private self-generators like Valara. ***Third***, Petitioners reprise their arguments that the CECPCN criteria could be applied to private actors and that *Pine Gate* is merely a decision about whether AC or DC capacity is determinative. But as the Commission explained in the Order: the CECPCN factors, when applied to private actors, require the Commission to substitute its own judgment for that of a private business owner; and *Pine Gate* itself expressly disavows the very premise that Petitioners

[1] Petitioners also do not seek reconsideration of the Order's ruling that the Utility Siting Act does not authorize private parties to initiate an enforcement action to halt construction, Order at 21-22; Pet. for Recons. at 1 n.1, so that request would remain barred even if the Commission revisited its jurisdictional ruling.

ELECTRONICALLY FILED - 2026 October 2 2:16 PM - SCPSC - Docket # 2026-158-E - Page 3 of 16

repeat. ***Fourth***, and finally, the Commission can and should deny the Petition on the unchallenged basis that Petitioners have no private right of action to seek the enforcement relief they requested.

The Petition for Reconsideration should therefore be denied.

STANDARD OF REVIEW

The standard for reconsideration is well established. A petition for reconsideration or rehearing is not an opportunity to reargue matters that were already fully briefed and considered by the tribunal. Rather, reconsideration is appropriate only where the movant demonstrates: (1) an intervening change in controlling law; (2) the availability of new evidence not previously available; or (3) the need to correct a clear error of law or prevent manifest injustice. *See* S.C. Code Ann. Regs. 103-835.

This is a high bar. A petition for reconsideration or rehearing is not a vehicle to "present points which lawyers for the losing parties have overlooked or misapprehended" or to give the losing party an opportunity to try the case "a second time." *Kennedy v. S.C. Ret. Sys.*, 349 S.C. 531, 532, 564 S.E.2d 322, 322 (2001). The Commission's orders are "presumptively correct." *Duke Energy Carolinas, LLC v. S.C. Off. of Regul. Staff*, 434 S.C. 392, 407, 864 S.E.2d 873, 881 (2021) (citation omitted). The party challenging those orders "bears the burden of convincingly proving the decision is clearly erroneous, or arbitrary or capricious, or an abuse of discretion, in view of the substantial evidence of the record as a whole." *Id.*

Petitioners' Petition for Reconsideration satisfies none of these requirements. There has been no intervening change in the law. Petitioners identify no new evidence that was unavailable at the time of briefing or oral argument. And the purported "errors" Petitioners identify are nothing more than disagreements with the Commission's well-reasoned analysis—precisely the type of reargument that the reconsideration standard is designed to preclude.

ELECTRONICALLY FILED - 2026 October 2 2:16 PM - SCPSC - Docket # 2026-158-E - Page 4 of 16

ARGUMENT

I. THE COMMISSION INTERPRETED THE STATUTE BASED ON ITS PLAIN TEXT AND PETITIONERS IDENTIFY NO ERROR WARRANTING RECONSIDERATION

Petitioners first contend that the Commission erred in finding that the Utility Facility Siting and Environmental Protection Act (the "Act") is ambiguous as applied to a private, non-utility entity that constructs a behind-the-meter generating facility for its own use. According to Petitioners, the language of the statute is unambiguous and requires that the Act be applied to private self-generators. Valara, on the other hand, contended in its Motion to Dismiss and at oral argument that the plain language unambiguously excluded those same private self-generators. These arguments were presented to the Commission in briefing and at oral argument, and Petitioners can identify no error in the process or reasoning the Commission adopted.

The Order directly addressed the question of statutory ambiguity over the course of several pages of careful analysis. The Commission applied settled South Carolina law, beginning with the rule that "[t]he first question of statutory interpretation is whether the statute's meaning is clear on its face." Order at 9 (citing *Kennedy v. S.C. Ret. Sys.*, 345 S.C. 339, 549 S.E.2d 243 (2001)). Applying that standard, the Commission found that "in the instant case, it is unclear whether the General Assembly intended 'person' as defined in section 58-33-20(5) to apply to private self-generators who do not intend to place the power generated on the electric grid such that they must seek a Certificate before commencing construction." Order at 10.

The Commission's ambiguity finding was a considered legal determination based on the Commission's identification of two reasonable interpretations of the statute. As the Order explained:

> The parties advanced two interpretations, and both interpretations are reasonable. The statute could be interpreted to exclude from the Commission's jurisdiction a private self-generator whose generating

ELECTRONICALLY FILED - 2026 October 2 2:16 PM - SCPSC - Docket # 2026-158-E - Page 5 of 16

> facility, while exceeding the threshold established in the Act, does not place the power generated onto the grid for retail customers. Alternatively, the statute could be interpreted to subject a private self-generator to the Commission's jurisdiction because, while the generating facility does not place power onto the grid for retail customers, "person" is broadly defined under the Act.

Id.

Having weighed both sides, the Commission concluded: "Therefore, because the statute is susceptible to two reasonable interpretations, the statute is ambiguous as applied to private self-generators where the electricity generated will not be placed onto the electric grid." *Id*. Even assuming arguendo that the statute presents any interpretive question, the Commission answered it correctly.

Petitioners ignore this analysis and claim "the Order never identifies any word, phrase, or provision in the certification requirement that is susceptible to two reasonable meanings" and that Valara never "advances a *textual* argument" in its favor. Pet. for Recons. at 10-11. Both arguments are wrong. As just outlined, the Commission did identify words, phrases, *and* provisions susceptible to two reasonable meanings—identifying the issue of the broad definition of "person" as compared to the narrowing text around it. Valara presented its own textual argument, which it contended was unambiguous as well: Valara explained that Petitioners' interpretation of "person" and "major utility facility" sought to isolate those terms from the statutory *text* that surrounds them. That is textual. *See* Valara's Proposed Order Granting Motion to Dismiss (Aug. 12, 2026) ("Proposed Order") at 11-13 (arguing that reading "person" in isolation from the compound term "major utility facility" renders "utility" surplusage throughout Chapter 33); Valara's Response to SELC Letter Brief (Aug. 13, 2026) at 2 (same). Petitioners sought to read "*utility*" out of "major utility facility" and read "*for public use*" out of the definition of public utilities. *See* Proposed Order at 12 (explaining that Petitioners' reading would make Chapter 33 applicable to any

ELECTRONICALLY FILED - 2026 October 2 2:16 PM - SCPSC - Docket # 2026-158-E - Page 6 of 16

generating plant over 75 MW, regardless of connection to public utility service, effectively reading "utility" out of the statutory phrase). Simply put, the Commission's Order, and Valara's position, were based in the operative text.

Nor does the Commission's reading import a limitation from outside the Utility Siting Act. Section 58-33-20 provides that its definitions apply "unless otherwise clearly apparent from the context." The context here is the Act itself: its definition of "utility" as a person engaged in generating or furnishing electricity "for public use," § 58-33-20(6), and the public-facing findings required by §§ 58-33-110(8)(a) and -160(1). *See* Order at 4-6, 11-13.

Petitioners' disagreement with the Order's findings premised on the operative text of the Utility Siting Act does not establish an error warranting reconsideration. The Commission applied the correct legal standard—the well-established South Carolina rule that a statute is ambiguous when it is "susceptible to two reasonable interpretations." *S.C. Dep't of Soc. Servs. v. Lisa C.*, 380 S.C. 406, 416, 669 S.E.2d 647, 652 (Ct. App. 2008); *Kennedy*, 345 S.C. at 348, 549 S.E.2d at 247 (holding that where the plain language lends itself to "two equally logical interpretations," the court "must apply the rules of statutory interpretation to resolve the ambiguity"); *see also* Order at 10 (citing same). The Commission identified the two competing interpretations, evaluated their reasonableness, and concluded that both were reasonable. This is a textbook application of the ambiguity doctrine, not a clear error of law. *See Wade v. Berkeley Cnty.*, 348 S.C. 224, 229, 559 S.E.2d 586, 588 (2002) (finding that "where a statute is ambiguous, the Court must construe the terms of the statute."); *Kennedy*, 345 S.C. at 348, 549 S.E.2d at 247 (same).

Petitioners' insistence that the statute is "plain" and "unambiguous" is simply a restatement of the argument they made in their briefing and at oral argument. The Commission heard this argument, considered it, and rejected it (with explanation). Order at 10. That Petitioners continue

ELECTRONICALLY FILED - 2026 October 2 2:16 PM - SCPSC - Docket # 2026-158-E - Page 7 of 16

to disagree with the Commission's reasoning and conclusion does not transform their disagreement into a basis for reconsideration.[2]

Petitioners also ignore the governing jurisdictional presumption. The Order held that the Commission's jurisdiction "must be premised on clear statutory language that leaves no reasonable doubt" and that "[a]ny reasonable doubt of the existence in the Commission of any particular power should ordinarily be resolved against its exercise." Order at 8–9 (citing *Piedmont & N. Ry. Co. v. Scott*, 202 S.C. 207, 223–24, 24 S.E.2d 353, 360 (1943)). Petitioners do not engage with that rule. Under *Piedmont*, reasonable doubt concerning the existence of a particular Commission power should ordinarily be resolved against jurisdiction, providing an independent basis to affirm the dismissal regardless of whether the interpretive step is called ambiguity or whole-statute construction. Petitioners likewise do not challenge the Order's absurdity holding. Order at 18–19 (quoting *State ex rel. McLeod v. Montgomery*, 244 S.C. 308, 314, 136 S.E.2d 778, 782 (1964)). That doctrine applies "however plain the ordinary meaning of the words," so it independently defeats Petitioners' plain-meaning theory even on their own premise. *Id.*

At bottom, Petitioners would have the Commission read "person" and "seventy-five megawatts" in isolation, turning "major utility facility" into a bare megawatt rule. Valara, on the other hand, read those terms and the certificate requirement consistent with the defined term "utility"—generating or furnishing electricity for public use, S.C. Code Ann. § 58-33-20(6) —and

[2] Even if the Commission were to conclude that its Order could have provided more detailed support for its ambiguity finding, the proper remedy under South Carolina law would not be to vacate the Order. Rather, the Commission may provide additional explanation in its order denying reconsideration. *See Porter v. S.C. Pub. Serv. Comm'n*, 333 S.C. 12, 28, 507 S.E.2d 328, 336 (1998) (reviewing the Commission's initial order and denial of reconsideration and finding that "[the] PSC adequately explained its findings of fact and reasoning when the original order and order upon reconsideration are read together."). Thus, Petitioners' argument that the Commission's ambiguity analysis was too conclusory does not warrant vacating the Order. At most, it invites the Commission to elaborate on its reasoning in an order denying reconsideration.

ELECTRONICALLY FILED - 2026 October 2 2:16 PM - SCPSC - Docket # 2026-158-E - Page 8 of 16

in a manner harmonized with the rest of the Act, the Commission's own implementing regulations, and its prior orders.[3] The Commission adopted Valara's reading and resolved this matter by construing the Act as a whole, as South Carolina law requires. *See CRFE, LLC v. Greenville Cnty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011) ("[T]he statute must be read as a whole and sections which are part of the same general statutory law must be construed together and each one given effect. . . . [W]e should not concentrate on isolated phrases within the statute. Instead, we read the statute as a whole and in a manner consonant and in harmony with its purpose."). Petitioner's mere disagreement with that resolution is not a basis for rehearing.

II. PETITIONERS' PLAIN-LANGUAGE ARGUMENT IS IMPROPER REARGUMENT THAT THE COMMISSION ALREADY CONSIDERED AND REJECTED

Petitioners next argue that the Commission's interpretation itself is erroneous. It is not. Petitioners argue the "plain language" of the Act compels Commission jurisdiction over Valara's Power Plant because the Act applies to any "person" who constructs a "major utility facility" and Valara is a "person" that is constructing such a facility. This is the identical argument Petitioners advanced in their Motion to Dismiss Opposition and in their Letter Brief. The Commission addressed this argument at length in the Order and rejected it for well-articulated reasons.

The Order devoted pages 11 through 16 to a comprehensive analysis of the statutory text read as a whole. The Commission began by applying the cardinal rule of statutory construction: that the statute "must be read as a whole and sections which are part of the same general statutory law must be construed together and each one given effect." Order at 11 (quoting *CRFE, LLC v. Greenville Cnty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011)). The Commission then

[3] *See infra* Section III.B (discussing *Pine Gate Renewables, LLC & Catalina Solar, LLC v. Dominion Energy South Carolina, Inc.*, Order No. 2023-906, Docket Nos. 2023-38-E and 2023-39-E (S.C.P.S.C. Dec. 28, 2023)).

ELECTRONICALLY FILED - 2026 October 2 2:16 PM - SCPSC - Docket # 2026-158-E - Page 9 of 16

explained that "[c]oncentrating on the word 'person' in section 58-33-110(1) ignores that the certification proceeding, and the attendant findings and determinations the Commission must make, examine the impact of the proposed major utility facility on the public." Order at 11.

The Commission proceeded to analyze the certification criteria in S.C. Code Ann. § 58-33-160(1)(a), (d), (e), and (f), demonstrating that each is oriented toward public use and public impact. *Id*. at 11–13. The Commission specifically addressed the "need" criterion, finding that "the evidence presented to the Commission, and the Commission's evaluation of the 'need' for the facility is public-centered; that is, whether the public purportedly requires the major utility facility proposed." *Id*. at 12. The Order further found that "[f]or the purposes of this Docket, the proposed Power Plant will not serve retail customers, will not add energy or capacity to satisfy an integrated resource plan presented to the Commission, and it is not placing the electricity generated on the grid for public use." *Id*.

The Commission's analysis extended to the public convenience and necessity requirement, system economy and reliability criteria, and the generation alternatives analysis—all of which the Commission found to be directed at public-serving facilities. *Id*. at 12–13. The Commission concluded: "To exercise jurisdiction over the proposed Power Plant would improperly detach the statutory criteria from the Commission's purpose: the Commission would be required to evaluate a private, behind-the-meter facility as though it were a public utility resource built to meet public load." *Id*. at 13.

The Commission also conducted an independent analysis of what constitutes "public use" under South Carolina law, applying the Supreme Court's *Anchor Point, Inc. v. Shoals Sewer Co.* framework. *Id*. at 13–15 (citing *Anchor Point, Inc. v. Shoals Sewer Co.,* 308 S.C. 422, 418 S.E.2d 546 (1992)). That analysis confirmed that Valara's proposed facility "will not directly furnish or

ELECTRONICALLY FILED - 2026 October 2 2:16 PM - SCPSC - Docket # 2026-158-E - Page 10 of 16

sell electricity generated by the Power Plant to the grid, or otherwise furnish or sell the electricity generated to any third-party for use by retail customers." *Id*. at 15.

The Commission further found support for its conclusion in its own regulations implementing the Act. The Order noted that the Commission's regulation "clearly excludes an entity that will be furnishing electricity to itself, even though the facility exceeds the statutory threshold." *Id*. at 16. The Commission specifically cited S.C. Code Ann. Regs. 103-302(6), which defines "electrical utility" to exclude "a person, corporation, special purpose district or municipality furnishing electricity only to himself or itself, their resident employees or tenants when such current is not resold or used by others." *Id*. at 15.

Every element of Petitioners' "plain language" argument was thus squarely before the Commission, was considered in detail, and was rejected through a thorough and well-reasoned analysis—premised on the actual plain language of the statute and supported by regulatory practice and case law. Petitioners' reassertion of the same argument on reconsideration, without identifying any error in the Commission's reasoning or any authority the Commission failed to consider, does not satisfy the standard for reconsideration. It is, instead, precisely the type of impermissible reargument that the reconsideration standard is designed to prevent. *See Kennedy*, 349 S.C. at 532, 564 S.E.2d at 322 (reconsideration is not a vehicle to reargue points previously raised).

III. PETITIONERS' ARGUMENTS REGARDING THE CECPCN CRITERIA AND *PINE GATE* WERE FULLY CONSIDERED AND CORRECTLY RESOLVED

Petitioners' third argument challenges the Commission's analysis of the Certificate of Environmental Compatibility and Public Convenience and Necessity ("CECPCN") criteria and the Commission's application of its own prior holding in *Pine Gate Renewables, LLC & Catalina Solar, LLC v. Dominion Energy South Carolina, Inc.*, Order No. 2023-906, Docket Nos. 2023-38-

ELECTRONICALLY FILED - 2026 October 2 2:16 PM - SCPSC - Docket # 2026-158-E - Page 11 of 16

E and 2023-39-E (S.C.P.S.C. Dec. 28, 2023). Once again, Petitioners presented these arguments to the Commission, and the Commission rejected them.

A. The Commission Properly Considered the CECPCN Criteria

Petitioners contend that the Commission's analysis of the CECPCN criteria in S.C. Code Ann. § 58-33-160 was flawed because the Commission purportedly assumed that those criteria could not be applied to a private self-generator. This argument was raised in Petitioners' Letter Brief, in which Petitioners argued at length that the Act's requirements could be adapted to apply to private entities. The Commission considered this contention and rejected it.

The Commission did not premise its analysis of the CECPCN criteria on the assumption that private entities could never satisfy them. Rather, the Commission determined that the criteria themselves reveal the Act's public-use orientation, which in turn informs the jurisdictional question. The Order explained that the statutory criteria require the Commission to evaluate whether the public needs the facility, whether it "serve[s] the interests of system economy and reliability," and whether "public convenience and necessity require [its] construction." Order at 11–13. These are inherently public-facing inquiries that presuppose the facility will serve the public.

The Commission specifically noted that the recent CECPCN proceedings involving private applicants involved a facility that would generate or deliver electricity for public use. The Order surveyed multiple recent cases—*SR Cordova, LLC*; *Kingstree East 230 LLC*; and *SR Lambert I, LLC* and *SR Lambert II, LLC*—and found that "[i]n each case, the applicant seeking a Certificate was a private entity and the facility to be built exceeded the statutory threshold of the Act. However, unlike the instant case, *SR Cordova*, *Kingstree*, and the *SR Lambert* entities were going to sell the energy and/or capacity generated to third-parties for ultimate use by customers; or, stated plainly, for public use." Order at 18.

ELECTRONICALLY FILED - 2026 October 2 2:16 PM - SCPSC - Docket # 2026-158-E - Page 12 of 16

Petitioners' Letter Brief argued that the Act's application requirements in S.C. Code Ann. § 58-33-120 and required findings in S.C. Code Ann. § 58-33-160 could be practically applied to a private entity like Valara. The Commission was aware of these arguments—the Letter Brief is expressly referenced in the record. The Commission nevertheless found them flawed because "[t]o exercise jurisdiction over the proposed Power Plant would improperly detach the statutory criteria from the Commission's purpose." Order at 13. The Commission reached this conclusion after full consideration of Petitioners' contrary position.

Petitioners' continued insistence that the CECPCN criteria can be applied to a private self-generator is not a basis for reconsideration. The Commission considered and rejected that argument, concluding that it would lead to an absurd result. Order at 19. Rearguing it on reconsideration—without pointing to any new authority, new evidence, or clear error of law—is precisely what the reconsideration standard prohibits.

B. The Commission Correctly Applied *Pine Gate*

Petitioners also challenge the Commission's reliance on its prior decision in *Pine Gate*. In *Pine Gate*, the Commission was asked to address the question of whether the Act's generation threshold should be measured by a facility's direct current (DC) nameplate capacity or by its alternating current (AC) output deliverable to the electric grid. *Pine Gate*, Order No. 2023-906. The Commission concluded that the proper measure was neither, but that "[a] major utility facility's megawatt rating is determined by the designed output of the electric generating plant," and that this rating is "premised on the electric generating plant's ability *to deliver 'power to the electric grid*.'" Order at 16 (quoting *Pine Gate*, Order No. 2023-906 at 114–15, 128). Because the facility in *Pine Gate* exported less than 75 MW onto the public grid, regardless of its higher nameplate capacity, the Act did not apply to it. *See id.* at 16 (citing *Pine Gate*, Order No. 2023-906 at 20-21, 129).

ELECTRONICALLY FILED - 2026 October 2 2:16 PM - SCPSC - Docket # 2026-158-E - Page 13 of 16

The Commission applied the *Pine Gate* holding to the instant case and found that its jurisdiction over a facility that exports *no* electricity to the public grid would also be precluded: "if a facility capable of generating more than the statutory threshold is not subject to the Act when it delivers less than statutory threshold for generation to the grid, then a private self-generator that cannot export any power to the grid results in a lack of jurisdiction for the Commission." Order at 16. This conclusion extends *Pine Gate*'s reasoning concerning designed output and delivery to the electric grid to Valara's proposed facility, which cannot export electricity.

Petitioners argued before the Order was issued—and now reargue on reconsideration—that *Pine Gate* is distinguishable because it involved a solar facility with inverters that reduced grid-deliverable output below the statutory threshold, whereas Valara's facility simply will not connect to the grid at all. But this purported distinction *strengthens* the Commission's conclusion rather than undermining it. If a facility that is physically connected to the grid but delivers less than 75 MW to the grid falls outside the Act's jurisdiction, then *a fortiori*, a facility that delivers zero megawatts to the grid must likewise fall outside the Act's jurisdiction. The Commission recognized this logical extension, and Petitioners have offered no persuasive reason—whether by law or new evidence—why the *Pine Gate* principle should apply only to facilities that happen to be grid-connected but deliver a reduced amount, and not to facilities that deliver nothing at all. In any case, such an argument (if any) should have been made at the time of the original argument, and is not properly raised now. *See Kennedy*, 349 S.C. at 532, 564 S.E.2d at 322.

Commissioner Caston's concurrence further reinforces the Commission's analysis. Commissioner Caston expressly grounded his conclusion in "the definition of a major utility facility as found in S.C. Code Ann. section 58-33-20(2)(a), and the decision the Commission reached in *Pine Gate*." Order at 24. He agreed that "the Commission lacks subject matter

ELECTRONICALLY FILED - 2026 October 2 2:16 PM - SCPSC - Docket # 2026-158-E - Page 14 of 16

jurisdiction over the Power Plant as proposed by Valara, as well as the Petition filed in the present Docket." *Id.* The concurrence's independent reliance on *Pine Gate* underscores that the Commission's application of that precedent was a considered and deliberate choice, not an error warranting reconsideration.

IV. PETITIONERS' EXPRESS CONCESSION ON THE PRIVATE ENFORCEMENT ISSUE PROVIDES AN INDEPENDENT, UNCHALLENGED BASIS FOR DISMISSAL

Even if the Commission were to reconsider the statutory construction question—which it should not—the Petition would still fail because Petitioners have no private right of action to seek the enforcement relief they requested. The Commission should deny the Petition on this independent, unchallenged basis alone.

Petitioners expressly conceded in footnote 1 of their Petition for Reconsideration that they "do not seek reconsideration" of the Commission's finding that "the Act does not authorize private parties to initiate an enforcement action [with the Commission] to compel a third party to obtain a Certificate required by the Act or to halt construction." Pet. for Recons. at 1 n.1; Order at 21. If the Commission revisits its jurisdictional ruling, it should separately reject Petitioners' request to halt construction as impermissible private enforcement.

CONCLUSION

Petitioners' Petition for Reconsideration is a plain attempt to reargue the merits of a case the Commission has already decided. Petitioners presented each of their arguments to the Commission through briefing, letter briefs, and oral argument prior to the issuance of Order No. 2026-525. The Commission considered each argument, weighed the competing positions, and issued a thorough, well-reasoned, 24-page Order explaining its conclusions. Petitioners' disagreement with those conclusions does not satisfy the standard for reconsideration.

ELECTRONICALLY FILED - 2026 October 2 2:16 PM - SCPSC - Docket # 2026-158-E - Page 15 of 16

The Commission's Order was supported by a comprehensive analysis of the statutory text read as a whole, the Act's public-use orientation as reflected in the CECPCN criteria, the Commission's own regulations implementing the Act, the Commission's prior holding in *Pine Gate*, and the absence of any private enforcement mechanism under the Act. None of these analytical foundations rest on a clear error of law, and Petitioners have identified no new evidence or changed circumstances.

WHEREFORE, Valara Holdings LLC respectfully requests that the Commission deny Petitioners' Petition for Reconsideration and/or Rehearing in its entirety and affirm Order No. 2026-525.

DATED: October 2, 2026

Respectfully submitted,

/s/ Charles Terreni

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ATTORNEYS FOR RESPONDENT VALARA HOLDINGS LLC

ELECTRONICALLY FILED - 2026 October 2 2:16 PM - SCPSC - Docket # 2026-158-E - Page 16 of 16

Action Item 12

PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA
COMMISSION DIRECTIVE

ADMINISTRATIVE MATTER	☐	DATE	**October 08, 2026**
MOTOR CARRIER MATTER	☐	DOCKET NO.	**2026-158-E**
UTILITIES MATTER	☑	ORDER NO.	

A FULL COMMISSION ORDER WILL BE ISSUED.

SUBJECT:

DOCKET NO. 2026-158-E - Concerned Citizens of Spartanburg County and Southern Alliance for Clean Energy, Complainants/Petitioners v. Valara Holdings, LLC, Defendant/Respondent - Staff Presents for Commission Consideration the Petition for Reconsideration and/or Rehearing Filed by Concerned Citizens of Spartanburg County and Southern Alliance for Clean Energy.

COMMISSION ACTION:

I move the Commission deny the Petition for Reconsideration and/or Rehearing filed by the Concerned Citizens of Spartanburg County and the Southern Alliance for Clean Energy (the Petitioners), which seeks reconsideration and/or rehearing of Order No. 2026-525. In reviewing the Petitioners' stated grounds supporting reconsideration and/or rehearing, there are no identified errors requiring reconsideration and/or rehearing.

The Commission will issue a full Order outlining its findings and conclusions.

PRESIDING: Williams SESSION: Regular TIME: 11:00 a.m.

	MOTION	YES	NO	OTHER	
BELSER	☐	☑	☐		Present in Hearing Room
BRITT	☐	☐	☐	Recused	
CASTON	☑	☑	☐		Present in Hearing Room
HENNELLY	☐	☑	☐		Present in Hearing Room
POWERS	☐	☑	☐		Present in Hearing Room
WHITFIELD	☐	☑	☐		Present in Hearing Room
WILLIAMS	☐	☑	☐		Present in Hearing Room

RECORDED BY: J. Schmieding

ACCEPTED FOR PROCESSING - 2026 October 8 2:27 PM - SCPSC - 2026-158-E - Page 1 of 2



ACCEPTED FOR PROCESSING - 2026 October 8 2:27 PM - SCPSC - 2026-158-E - Page 2 of 2

BEFORE

THE PUBLIC SERVICE COMMISSION

OF SOUTH CAROLINA

DOCKET NO. 2026-158-E – ORDER NO. 2026-659

OCTOBER 23, 2026

IN RE: Concerned Citizens of Spartanburg County and Southern Alliance for Clean Energy, Petitioners v. Valara Holdings, LLC, Respondent.	))))	ORDER DENYING RECONSIDERATION AND REHEARING

I. INTRODUCTION

This matter comes before the Public Service Commission of South Carolina (Commission) on the Petition for Reconsideration and/or Rehearing (Petition) filed by the Concerned Citizens of Spartanburg County (Concerned Citizens) and the Southern Alliance for Clean Energy (SACE) (together, Petitioners). Order No. 2026-525 (Order), from which Petitioners seek reconsideration, was issued on September 14, 2026.[1] For the reasons discussed herein, the Petition is denied.

II. APPLICABLE LAW

South Carolina law provides that any party to the proceeding "may within ten days after service of notice of the entry of the order or decision apply for a rehearing in respect to any matter determined in such proceedings[.]" S.C. Code Ann. § 58-27-2150 (Supp.

[1] Order No. 2026-525 determined, among other things, that the Commission lacked jurisdiction over the approximately 450-megawatt (MW) gas-fired power plant (Power Plant) to be constructed by Valara Holdings, LLC (Valara), and therefore dismissed the Petition for Declaratory Order, Petition for Rule to Show Cause Order, and Request for Expedited Relief filed by the Petitioners in this proceeding.

2025). The Commission may, where proper, grant or deny a petition and hold rehearing. The statute requires the Commission to grant or refuse rehearing within twenty days. *Id.*

The Commission's regulations require a petition for rehearing or reconsideration to include (a) the factual and legal issues forming the basis for the petition; (b) the alleged error or errors in the Commission order; and, (c) the statutory provision or other authority upon which the petition is based. S.C. Code Ann. Regs. § 103-825(A)(4) (2012).

Case law and prior Commission orders have addressed the purpose of a petition seeking rehearing or reconsideration. Specifically, the purpose "is not to present points which lawyers for the losing parties have overlooked or misapprehended," nor is its purpose to have the case "tried a second time." *Kennedy v. S.C. Ret. Sys.*, 349 S.C. 531, 532, 564 S.E.2d 322, 322 (2001). Rather "[t]he purpose of the petition for rehearing and/or reconsideration is to allow the Commission the discretion to rehear and/or reexamine the merits of issued orders, pursuant to legal or factual questions raised about those orders by parties in interest, prior to a possible appeal." *In re: South Carolina Electric & Gas Co.*, Order No. 2013-5, at 1-2 (Feb. 14, 2013). The Supreme Court of South Carolina has ruled that a party may not raise issues in a motion to reconsider that could have been presented prior to the decision on the merits or that are raised for the first time in a petition for rehearing. *Kiawah Prop. Owners Grp. v. Pub. Serv. Comm'n of S.C.*, 359 S.C. 105, 113, 597 S.E.2d 145, 149 (2004).

The Commission's findings are "presumptively correct, [and] the party challenging the [Commission's] order bears the burden of convincingly proving the decision is clearly erroneous, or arbitrary or capricious, or an abuse of discretion, in view of the substantial evidence of the record as a whole." *Duke Energy Carolinas, LLC v. S.C. Off. of Regul. Staff,*

434 S.C. 392, 407, 864 S.E.2d 873, 881 (2021) (quoting *S.C. Energy Users Comm. v. S.C. Pub. Serv. Comm'n*, 388 S.C. 486, 491, 697 S.E.2d 587, 590 (2010)).

III. DISCUSSION

Petitioners have alleged the Order provided no legally permissible justification for its conclusion that the Utility Facility Siting and Environmental Protection Act (Act) is ambiguous. The Order detailed the Commission's powers and authority as conferred by the General Assembly, which includes siting authority as specified in the Act. However, the Commission is a creature of statute; therefore, it exercises "only such powers as are conferred, expressly or by reasonably necessary implication, or such as are merely incidental to the powers expressly granted." *Black River Elec. Coop., Inc. v. Pub. Serv. Comm'n*, 238 S.C. 282, 292, 120 S.E.2d 6, 11 (1961); accord *In Re: Sarah Zito; Alvaro Sarmiento, Jr; Mark Shinn; and Daniel Bermudez v. Strata Audubon, LLC and Strata Veridian, LLC*, 2022 WL 3098732, at *1 (S.C.P.S.C. July 21, 2022), aff'd, 447 S.C. 405, 926 S.E.2d 795 (Ct. App. 2026). The Supreme Court of South Carolina has explained "[a]ny reasonable doubt of the existence in the Commission of any particular power should ordinarily be resolved against its exercise of the power," and such "asserted powers are not to be derived from mere inference." *Piedmont & N. Ry. Co. v. Scott*, 202 S.C. 207, 223-24, 24 S.E.2d 353, 360 (1943). The Commission's jurisdiction must be premised on clear statutory language that leaves no reasonable doubt as to the Commission's authority. Order No. 2026-525 at 7-9, citing *Piedmont*, 202 S.C. at 223-24, 24 S.E.2d at 360. As the Order

explained, under the *Piedmont* holding, reasonable doubt concerning the existence of a particular Commission power should ordinarily be resolved against jurisdiction. Order No. 2026-525 at 18-19 (quoting *State ex rel. McLeod v. Montgomery*, 244 S.C. 308, 314, 136 S.E.2d 778, 782 (1964)).

As noted in the Order, the central question before the Commission presented an issue of first impression; namely, whether the Act conferred jurisdiction where a private, nonutility entity constructs an electric generating facility that exceeds the megawatt threshold articulated in the Act, but the electricity generated will not be supplied for public use. Order No. 2026-525 at 8-9. The Order also acknowledged that, in South Carolina, the "cardinal rule of statutory construction is for the Court to ascertain and effectuate the intent of the legislature." *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) (citing *Charleston County Sch. Dist. v. State Budget and Control Bd.*, 313 S.C. 1, 437 S.E.2d 6 (1993). The Commission must first determine if the statute's meaning is clear on its face. *Kennedy v. South Carolina Retirement Sys.*, 345 S.C. 339, 347, 549 S.E.2d 243, 246 (2001). "If a statute's language is plain and unambiguous, and conveys a clear and definite meaning, there is no occasion for employing rules of statutory interpretation and the court has no right to look for or impose another meaning." *Id.* (citing *Paschal v. State Election Comm'n*, 317 S.C. 434, 436, 454 S.E.2d 890, 892 (1995)). However, if the statute is ambiguous, a court "must construe the terms of the statute." *Lester v. South Carolina Workers' Compensation Comm'n*, 334 S.C. 557, 514 S.E.2d 751 (1999).

In the Order, the Commission concluded the statute was ambiguous, as it was unclear whether the General Assembly intended the Act to apply to private self-generators who will not place the power generated on the electric grid. *See* S.C. Code Ann. § 58-33-

110(1) (stating "No person shall commence to construct a major utility facility without first having obtained a certificate issued with respect to such facility by the commission.").[2] Notably, it remains undisputed that the Power Plant would not place the power generated onto the grid for retail customers.

As used in the Act, "person" is defined as "any individual, group, firm, partnership, corporation, cooperative, association, government subdivision, government agency, local government, municipality, any other organization, or any combination of any of the foregoing, and shall include [Santee Cooper]." S.C. Code Ann. § 58-33-20(5) (Supp. 2025). Read in isolation, without reference to any of the other provisions in the Act, would support the interpretation advanced by the Petitioners; that is, the Act would apply to Valara's Power Plant.

The Act also defines "public utility" and "utility" as "any *person* engaged in the generating, distributing, sale, delivery, or furnishing of electricity for public use." S.C. Code Ann. § 58-33-20(6) (Supp. 2025) (emphasis added). In instances "[w]here each defined term appears in a statute, the reader must interpret that term consistent with its statutory definition rather than its ordinary meaning." *Tanzin v. Tanvir*, 592 U.S. 43, 47 (2020) ("When 'a statute includes an explicit definition' of a term, 'we must follow that definition, even if it varies from a term's ordinary meaning.'")). Applying that principle to the definitions as used in the Act, the terms "public utility" and "utility" would be defined as follows: "any [individual, group, firm, partnership, corporation, cooperative,

[2] The "certificate" referenced in the statutory provision is a Certificate of Environmental Compatibility and Public Convenience and Necessity. *See also* S.C. Code Ann. § 58-33-20(8) (Supp. 2025).

association, government subdivision, government agency, local government, municipality, any other organization, or any combination of any of the foregoing, and shall include [Santee Cooper]], engaged in the generating, distributing, sale, delivery, or furnishing of electricity for public use." Such reading would support the interpretation as advanced by Valara; that is, the facility would not be subject to the requirements of the Act, as none of the self-generated power would be for public use.

As the Supreme Court of South Carolina determined in *Hodges*, the cardinal rule of statutory construction is to effectuate the intent of the legislature. It is well settled in South Carolina jurisprudence that if a statute is susceptible to two reasonable interpretations, it is ambiguous. *South Carolina Dept. of Social Services v. Lisa C*, 80 S.C. 406, 416, 669 S.E.2d 647, 652 (Ct. App. 2008). As a result of engaging with the statutory text, considering the reasonableness of the two interpretations, and this specific factual scenario presenting an issue of first impression, the Commission determined that the statute was ambiguous. The intent of the legislature could not be fully ascertained to effectuate such intent. Therefore, the Commission turned to construing the terms of the statute. Order No. 2026-525 at 9-11, citing *Wade v. Berkeley County*, 348 S.C. 224, 229, 559 S.E.2d 586, 588 (2002); *Kennedy*, 345 S.C. at 348, 549 S.E.2d at 247.

Petitioners next asserted that the Commission unlawfully applied statutory construction rules and went beyond the text of the Act. Petitioners maintain that the Act is plain and unambiguous. However, given the Commission's determination that, being susceptible to two reasonable explanations, the statute is ambiguous, it was proper for the Commission to apply statutory construction rules. In employing the rules of statutory

construction, the Commission applied the principle that the statute "must be read as a whole and sections which are part of the same general statutory law must be construed together and each one given effect." Order No. 2026-525 at 11 (quoting *CRFE, LLC v. Greenville Cnty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011)). Applying the principle of *CRFE, LLC* to the instant case, to concentrate on the word "person" in section 58-33-110(1) of the Act in isolation ignores the overall purpose of the Act as a certification proceeding, one which requires the Commission to examine a proposed major utility facility's impact on the public. *Id.*

The Order then analyzed the attendant findings and determinations the Commission must make pursuant to the Act in support of its conclusion that the Commission lacked jurisdiction over the Power Plant. *See* Order No. 2026-525 at 12-13; *see also* S.C. Code Ann. § 58-33-160(1) (Supp. 2025). Petitioners alleged error in relying on the certificate application and approval requirements, stating that the Commission inferred a public use requirement that does not appear in the operative provisions of the Act. Petition at 15. The statutory definitions contained in the Act do provide insight as to the General Assembly's intent. S.C. Code Ann. section 58-33-20(6) provides "[t]he term 'public utility' or 'utility' means any person engaged in the generating, distributing, sale, delivery, or furnishing of electricity *for public use*." (emphasis added). Further evidence of the General Assembly's intent may be found in Section 44 of the South Carolina Energy Security Act of 2025, which made certain amendments to the Act as well as other chapters within Title 58. The section provides, in relevant part, "[t]he General Assembly finds that the sections presented in this act constitute one subject . . . in particular finding that each change and each topic

relates directly to or in conjunction with other sections to the *subject of regulation of electrical utilities, the provision of electricity*, and economic development[.]" 2025 S.C. Act No. 41, at § 44 (emphasis added). Public use language is, therefore, not only evident in the Act itself, but also in the most recent amendments enacted by the General Assembly.

The Commission is required to evaluate whether a showing has been made regarding the basis of the need for the facility. S.C. Code Ann. § 58-33-160(1)(f) (Supp. 2025). Petitioners assert that "[n]othing in the Act's certification criteria requires the Commission to determine whether the public itself requires the proposed facility." Petition at 15. Petitioners' argument overlooks that the basis of need section requires an applicant seeking a Certificate to show how the facility will aid in furnishing electricity. Petitioners asserted that the Commission's reasoning assumes that because the certification criteria in the Act have historically been applied to utility-owned generating plants or privately-owned facilities which sell power to the grid, the criteria could never be applied to a private, self-generating facility, such as the Power Plant at issue in the instant case. Petition at 17. Notably, Petitioners' argument highlights the very ambiguity that exists in the statute, and the reality that the legislature's intent cannot be determined to be effectuated. This is especially apparent where, elsewhere in Title 58, there is some demonstrated intent of the General Assembly to exclude an entity furnishing electricity only to itself.[3]

Similarly, as noted in the Order, the Commission must find and determine whether an applicant seeking a Certificate has shown that "public convenience and necessity require the construction of the facility." S.C. Code Ann. § 58-33-160(1)(f) (Supp. 2025). The

[3] *See, e.g.*, S.C. Code Ann. § 58-27-10(7) ("The term 'electrical utility' . . . shall not include a person, corporation, or municipality furnishing electricity only to himself or itself, their residents, employees, or tenants when such current is not resoled or used by others.").

Commission, in reviewing the statutory criteria, determined that the evaluation is centered on public impact, a necessary component of which is public use. Order No. 2026-525 at 12-13. The phrase "public convenience and necessity" comes directly from the text of the statute, thereby providing evidence of the General Assembly's intent for the Commission to evaluate the proposed facility based on its impact to the public at large. The plain text of the statutory criteria cuts against Petitioners' assertions of error in the Order.

The Commission similarly drew support for its conclusions from its regulations implementing the Act, which exclude from its application "a person, corporation, special purpose district or municipality furnishing electricity only to himself or itself, their resident employees or tenants when such current is not resold or used by others." Order No. 2026-525 at 15 (citing S.C. Code Ann. Regs. 103-302(5) and (6), and 103-304). Petitioners did not allege any error in the Commission's analysis of its regulations.

The Order cited and analyzed several Commission orders in cases arising under the Act where private entities sought a certificate to build a major utility facility. In each case, the entities were going to sell the energy and/or capacity generated for customers' ultimate use. *Id.* at 18. Petitioners did not allege any error in the Commission's analysis of its prior decisions in those cases.[4] Finally, Petitioners did not allege any error in the Commission's final step in the statutory construction process; namely, analyzing whether the Commission's statutory interpretation would lead to an absurd result. *Id.* at 18-19.

[4] Petitioners do assert that Order No. 2026-525 improperly broadened its finding in Pine Gate Renewables, LLC & Catalina Solar, LLC. In that case, the Commission determined that "[a] major utility facility's megawatt rating is determined by the designed output of the electric generating plant," and that rating is premised on the electric generating plant's *ability to deliver "power to the electric grid.*" Order No. 2023-906 at 114-15, 128, Docket Nos. 2023-38-E and 2023-39-E, (Dec. 28, 2023) (emphasis added). The decision in the instant case does not improperly enlarge the Commission's holding in Pine Gate; rather, it extrapolates the holding to its logical conclusion based on a facility's ability to deliver power to the electric grid.

Petitioners challenged the Commission's conclusion that the Act does not apply to Valara's Power Plant, reiterating its plain language argument and asserting the Commission improperly went beyond the text of the statute. However, as discussed herein, given the ambiguity in the statute and its application to the instant factual scenario, the Commission appropriately employed the rules of statutory construction. In doing so, the Commission adhered to the cardinal rule as articulated in *Hodges*; that is, to effectuate the intent of the legislature. Regarding Petitioners' repeated argument concerning the plain language, case law is clear that the purpose of a petition for reconsideration or rehearing "is not to present points which lawyers for the losing parties have overlooked or misapprehended," nor is its purpose to have the case "tried a second time." *Kennedy*, 349 S.C. at 532, 564 S.E.2d at 322.

IV. CONCLUSIONS OF LAW

The Order analyzed the statutory text read as a whole, the public-use orientation inherent in the findings and determinations the Commission must make in the Act, and prior Commission orders interpreting the Act. Petitioners have not set forward any alleged factual or legal errors warranting reconsideration or rehearing of the Order.

V. ORDERING PARAGRAPHS

IT IS THEREFORE ORDERED:

1. The Petition for Reconsideration and/or Rehearing seeking reconsideration of Order No. 2026-525 is hereby denied.

2. This Order shall remain in full force and effect until further order of the Commission.

BY ORDER OF THE COMMISSION:

Justin T. Williams
Public Service Commission
of South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	SEVENTH JUDICIAL CIRCUIT
	)	
Concerned Citizens of Spartanburg County,	)	Civil Action No. 2026CP4203416
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	**DEFENDANT VALARA HOLDINGS LLC'S OPPOSITION TO PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION**
Valara Holdings LLC; Spartanburg County; and Spartanburg County Administrator	)	
	)	
Defendants.	)	
	)	
	)	
	)	

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

TABLE OF CONTENTS

INTRODUCTION **1**

FACTUAL BACKGROUND **6**

A. Valara Makes a Historic Investment in Spartanburg County. 6

B. Valara Obtains the Necessary Permits to Construct the HPCC. 8

C. Plaintiff and Its Members Sit on Their Hands While Construction Proceeds. 11

LEGAL STANDARD **13**

ARGUMENT **15**

I. Plaintiff Will Not Be Irreparably Harmed Without an Injunction. **15**

A. Plaintiff Delayed Seeking Relief Despite Ample Opportunity to Act. 16

B. Plaintiff Has Not Shown an Irreparable Injury. 20

1. Plaintiff's Assertions of Loss of Use and Enjoyment Do Not Constitute an Immediate, Irreparable Harm. 21

2. Plaintiff's Speculative Allegations of Future Harm Once the HPCC Begins to Operate Cannot Constitute an Immediate, Irreparable Harm. 22

3. Plaintiff Has Not Been Irreparably Harmed by the Alleged Loss of a Public Forum to Challenge the HPCC. 23

II. Plaintiff Cannot Succeed on The Merits. **26**

A. Plaintiff Cannot Succeed on the Merits Because It Has Not Exhausted Administrative Remedies. 26

B. Plaintiff Cannot Succeed on Counts I and II Because Valara's Minor Land Development Applications Did Not Violate the ULMO. 29

C. Plaintiff Cannot Succeed on Count III Because All Clearing, Grading, and Excavating Is Authorized by Valara's Land Disturbance Permits. 32

III. Plaintiff Has an Adequate Remedy at Law. **33**

IV. Plaintiff Must Post a Substantial Bond Before Any Injunction Issues. **36**

CONCLUSION **39**

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

TABLE OF AUTHORITIES

Cases **Page(s)**

Abba Equip., Inc. v. Thomason,
335 S.C. 477, 517 S.E.2d 235 (Ct. App. 1999).....27

AJG Holdings LLC v. Dunn,
382 S.C. 43, 674 S.E.2d 505 (Ct. App. 2009).....21

Amoco Prod. Co. v. Vill. of Gambell,
480 U.S. 531 (1987).....20, 21

Atwood Agency v. Black,
374 S.C. 68, 646 S.E.2d 882 (2007) 36

Beaufort Realty Co. v. Beaufort Cnty.,
346 S.C. 298, 551 S.E.2d 588 (Ct. App. 2001).....23

Boehm v. Town of Sullivan's Island Bd. of Zoning Appeals,
423 S.C. 169, 813 S.E.2d 874 (Ct. App. 2018).....29

Botany Bay Marina, Inc. v. Townsend,
296 S.C. 330, 372 S.E.2d 584 (1988) 28

Carnival Corp. v. Historic Ansonborough Neighborhood Ass'n,
407 S.C. 67, 753 S.E.2d 846 (2014) 21, 33

Charleston Dev. Co., LLC v. Alami,
433 S.C. 533, 860 S.E.2d 687 (Ct. App. 2021).....22, 27, 29

Cir. City Stores, Inc. v. Adams,
532 U.S. 105 (2001).....32

Cnty. of Richland v. Simpkins,
348 S.C. 664, 560 S.E.2d 902 (Ct. App. 2002).....14, 26

Coffy v. Graziana,
2023 WL 4998602 (D.S.C. Apr. 25, 2023).....19

Collins v. Sigmon,
299 S.C. 464, 385 S.E.2d 835 (1989) 16, 18

Compton v. S.C. Dep't of Corr.,
392 S.C. 361, 709 S.E.2d 639 (2011) 15, 17

Consumer Advoc. for State v. S.C. Dep't of Ins.,
397 S.C. 599, 725 S.E.2d 708 (Ct. App. 2012).....31

Cooper River Bridge v. S.C. Tax Comm'n,
182 S.C. 72, 188 S.E. 508 (1936) 32

Dunbar v. City of Spartanburg,
226 S.C. 360, 85 S.E.2d 281 (1954) 35

Dunbar v. City of Spartanburg,
266 S.C. 113, 221 S.E.2d 848 (1976) 27

FOC Lawshe Ltd. P'ship v. Int'l Paper Co.,
352 S.C. 408, 574 S.E.2d 228 (Ct. App. 2002).....14

Furr v. Horry Cnty. Zoning Bd. of Appeals,
411 S.C. 178, 767 S.E.2d 221 (Ct. App. 2014).....31

Greenville Bistro, LLC v. Greenville Cnty.,
435 S.C. 146, 866 S.E.2d 562, 570 (2021) 26

Guzman v. Polaris Indus. Inc.,
49 F.4th 1308 (9th Cir. 2022) 35

Hamadneh v. Grand Strand Reg'l Med. Ctr., LLC,
No. 4:26-cv-0335-JD-TER, 2026 WL 395980 (D.S.C. Feb. 12, 2026).....15

Haynes v. City of Durham,
No. 1:12cv1090, 2016 WL 469608 (M.D.N.C. Feb. 5, 2016).....35

Heilker v. Zoning Bd. of Appeals for City of Beaufort,
346 S.C. 401, 552 S.E.2d 42 (Ct. App. 2001).....33

Historic Charleston Found. v. Krawcheck,
313 S.C. 500, 443 S.E.2d 401 (Ct. App. 1994).....29

Hyler v. Wheeler,
240 S.C. 386, 126 S.E.2d 173 (1962) 36

Jack H. Kee, Jr., Petitioner,
No. 99-ALJ-07-0203-IJ, 1999 WL 317184 (ALJ Apr. 26, 1999).....35

Lominick v. City of Aiken,
244 S.C. 32, 135 S.E.2d 305 (1964) 26, 28

Martin v. Paradise Cove Marina, Inc.,
348 S.C. 379, 559 S.E.2d 348 (Ct. App. 2001).....36

Milliken & Co. v. Morin,
386 S.C. 1, 685 S.E.2d 828 (Ct. App. 2009).....33

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

Moore v. Sumter Cnty. Council,
300 S.C. 270, 387 S.E.2d 455 (1990) 27

NAACP v. City of Myrtle Beach,
No. 4:18-CV-00554, 2018 WL 2332018 (D.S.C. May 23, 2018) 16

NRDC v. Houston,
146 F.3d 1118 (9th Cir. 1998) 25

Nutt Corp. v. Howell Rd., LLC,
396 S.C. 323, 721 S.E.2d 447 (Ct. App. 2011).....35

Palumbo v. Waste Techs. Indus.,
989 F.2d 156 (4th Cir. 1993) 28

Purdy v. Moise,
223 S.C. 298, 75 S.E.2d 605 (1953) 31

Quince Orchard Valley Citizens Ass'n, Inc. v. Hodel,
872 F.2d 75 (4th Cir. 1989) 16, 26

Richland Cnty. v. S.C. Dep't of Revenue,
422 S.C. 292, 811 S.E.2d 758 (2018) 13, 14

S. Bell Tel. & Tel. Co. v. Hamm,
306 S.C. 70, 409 S.E.2d 775 (1991) 30

Santee Cooper Resort, Inc. v. S.C. Pub. Serv. Comm'n,
298 S.C. 179, 379 S.E.2d 119 (1989) 33, 34

Sierra Club v. Marsh,
714 F. Supp. 539 (D. Me. 1989), *aff'd*, 976 F.2d 763 (1st Cir. 1992).....25, 26

Sierra Club v. Marsh,
872 F.2d 497 (1st Cir. 1989).....25

Strategic Res. Co. v. BCS Life Ins. Co.,
367 S.C. 540, 627 S.E.2d 687 (2006) 13, 14, 15, 35

Sw. Airlines Co. v. Saxon,
596 U.S. 450 (2022).....32

Van Buren v. United States,
593 U.S. 374 (2021).....31

Winter v. Nat. Res. Def. Council, Inc.,
555 U.S. 7 (2008).....15

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

Zabinski v. Bright Acres Assocs.,
346 S.C. 580, 553 S.E.2d 110 (2001) 19

Statutes

Noise Ordinance Amendment (O-26-14), available at
https://www.spartanburgcounty.gov/DocumentCenter/View/106895/Noise-Ordinance-Amendment-O-26-14 30

S.C. Code Ann. § 6-29-780(A) 27, 28

S.C. Code Ann. § 6-29-800(A) 27, 28

S.C. Code Ann. § 6-29-800(B) 28

S.C. Code Ann. § 6-29-820(A) 28, 29

S.C. Code Ann. § 6-29-950(A) 14

S.C. Code Ann. § 6-29-1520(7) 30

S.C. Code Ann. § 48-39-150(D) 35

Unified Land Management Ordinance..... *passim*

Rules

South Carolina Rule of Civil Procedure 65 .....36, 38

Other Authorities

Ashley Listrom, *Spartanburg County delays vote on data center moratorium*, FOX CAROLINA (Aug 17, 2026)
https://www.foxcarolina.com/2026/08/18/spartanburg-county-delays-vote-data-center-moratorium/ [https://perma.cc/7LTE-V73Y].....24

No Data Centers in Spartanburg, FACEBOOK
https://www.facebook.com/groups/1354334266189772/ 24

27 S.C. Jur. *Injunctions* § 12.....37

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

Defendant Valara Holdings LLC ("Valara") respectfully submits this memorandum of law in opposition to the Motion for Preliminary Injunction (the "Motion") filed by Plaintiff Concerned Citizens of Spartanburg County ("Plaintiff" or "CCSC").[1]

INTRODUCTION

This case arises out of Valara's construction of a high-performance computing center (the "HPCC" or the "Project") in Spartanburg County, South Carolina. Construction of the HPCC began more than a year ago and has been proceeding deliberately and methodically ever since. There are currently more than 1,500 skilled craftsmen employed on the Project. To date, Valara has spent approximately a billion dollars on development and construction. Once it is complete, the HPCC will employ more than 150 full-time individuals, generate tens of millions of dollars in tax revenue for the community every year, and inject millions of dollars more into local businesses. When it was first announced more than sixteen months ago, the Governor of South Carolina called the Project a "milestone moment" for Spartanburg County; South Carolina's Secretary of Commerce "celebrate[d] this remarkable investment . . . and all it will mean for our state and our people"; and the Vice Chairman of the Spartanburg County Council remarked that "Spartanburg will greatly benefit from this highly unique and dynamic investment for years to come."

Not everyone sees it that way, however. Plaintiff in this case is an unincorporated organization comprised of a handful of Spartanburg County citizens, founded earlier this year with a single mission: stop construction of the HPCC at all costs. Sixteen months after development of the HPCC was publicly announced and nearly a year after construction started, Plaintiff now

[1] Unless otherwise noted herein, all emphasis is added, all internal quotations, citations, alterations, and subsequent history are omitted. Referenced herein are the Affidavits of Mark Johnson (the "Johnson Affidavit"), Lisa Amador, P.E. (the "Amador Affidavit"), Laurie Oakman (the "Oakman Affidavit"), and Travis Brown (the "Brown Affidavit").

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

asks this Court to enjoin Valara from performing any further work on the Project, on the grounds that the valid permit issued to Valara by the County over a year ago was improperly issued. Plaintiff's request is as remarkable as it sounds, and just as meritless: the Court should soundly reject Plaintiff's Motion because Plaintiff has failed to meet its significant burden of establishing *any* of the requirements of a preliminary injunction.

First, Plaintiff has not established that an injunction is necessary to prevent "immediate, irreparable harm." Nor could it, given how long Plaintiff and its members waited to seek this relief. If Plaintiff truly faced irreparable harm, it should have sought an injunction sixteen months ago, when it was first announced that Valara would be constructing a $2.8 billion computing center and power plant; a year ago, when the County issued the first development permit and construction began; or even five months ago in March of this year, when Plaintiff's members themselves claim they first became "concerned" about the "scale" of construction at the Project. Instead, they did nothing, even as Valara and its general contractor proceeded to hire over 1,000 workers and spend approximately a billion dollars to construct its facility in full view of Plaintiff's members. Under established law, Plaintiff's delay forecloses it from seeking equitable relief, which is designed to help the "vigilant and diligent," not those who sit on their alleged rights.

Of course, Plaintiff could not have established a likelihood of irreparable harm even had it sought injunctive relief back in August 2025, when the first permit was issued. Although Plaintiff asserts that its members have lost the use and enjoyment of their homes, the neighborhood, and the natural scenery, the law holds that such non-"particularized" harm does not constitute an irreparable injury; and even if it did, Plaintiff has not provided sufficient evidence to establish any harm caused *by the HPCC*. Similarly, Plaintiff's speculative concerns about *future* harm once the HPCC is operational cannot, as a matter of law, support preliminary injunctive relief. And

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

Plaintiff's argument that it was deprived of a public forum to challenge the Project both ignores all the County Council meetings and other public fora at which Plaintiff's members have had (and have vocally exercised) the opportunity to challenge the HPCC and misinterprets the scant legal authority that Plaintiff cites in support.

Second, Plaintiff cannot establish a likelihood of success on the merits. As set forth in the Motion to Dismiss ("MTD Mem.") that Valara filed last week, Plaintiff's claims here must be dismissed because Plaintiff brought them without exhausting its administrative remedies. The Unified Land Management Ordinance ("ULMO")[2] under which Plaintiff's claims arise expressly provides for an appeal procedure that a party must follow if they wish to challenge a decision of the Spartanburg County Administrator ("SCA"), such as the issuance of a permit, as well as a time limit within which to do so. The ULMO also provides a mechanism through which Plaintiff was required to submit to the County, and not to this Court, its complaint that Valara exceeded the scope of its permits. Plaintiff did not pursue ***any*** of these administrative remedies. Accordingly, its claims necessarily fail: its challenge to the Phase I Land Development Permit is now barred because the time to appeal has expired; its challenge to the Phase II Application is premature because no permit has been issued; and its claim that Valara exceeded the scope of its Phase I Land Development Permit is false but should be raised, if at all, with the SCA, not in a pleading filed in this Court.

Even if this Court were the appropriate forum for challenges to the County's administrative decisions, Plaintiff's challenges would also fail on the merits. The core of Plaintiff's Amended Complaint asserts that the HPCC is a "Major" Land Development, not a "Minor" Land Development, and should have been subject to a heightened review process that a Major

[2] A copy of the ULMO is attached to Plaintiff's Amended Complaint as Exhibit 1.

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

Development requires. Plaintiff is wrong. After all, it was the County that suggested that Valara apply for Minor Land Development permits for development of the Project, Amador Aff. ¶ 5, and the County is given great deference in the application of its own ordinance. In any event, the County's application of the ULMO here was entirely accurate. The ULMO sets forth a list of fourteen specific types of land uses that are "Major" developments, and expressly states that "[a]ll other [u]ses [n]ot [c]lassified as Major" are necessarily "Minor." A high-performance computing center (or "data center," to use the label Plaintiff ascribes the Project) is not "[c]lassified as Major"—the County has elected not to include it in any of the 24 amendments it made to the ULMO since it was adopted in 1999. It therefore must be "Minor." The County did not err in issuing a Minor Land Development permit to Valara for Phase I of the Project, and Plaintiff's challenge to that permit—and to the pending Phase II Land Development Permit, once granted—necessarily will fail.

Plaintiff's new claim that Valara has exceeded the scope of its Phase I permit—based solely on drone photos showing earth purportedly disturbed beyond the boundaries of that permit—fares no better. Such claim reveals Plaintiff's misunderstanding of both the breadth of the permits Valara already has received and the scope of Valara's construction to date. The County has not merely issued a Phase I land *development* permit to Valara (as well as having conditionally approved a Phase II land development permit)—the Plaintiff conveniently ignores the fact that the County has also issued multiple land *disturbance* permits covering nearly every square foot of the Property. Those permits expressly allow Valara to conduct mass grading and tree-clearing—the precise activities captured by Plaintiff's drone footage—which means that Plaintiff's claim that Valara has exceeded the scope of its permits necessarily fails as a matter of law.

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

Third, Plaintiff indisputably has an "adequate remedy at law"—namely, the same administrative remedies that Plaintiff failed to exhaust. The fact that Plaintiff can no longer avail itself of those remedies due to its own delay does not, under established law, allow it to nevertheless seek an injunction in this Court. Plaintiff's assertion that it did not receive sufficient notice of the Phase I Land Development Permit to pursue those remedies is both false and legally irrelevant, as is its contention that the administrative remedies available are inadequate because they involve an appeal to an authority with the power to exercise discretion. Accordingly, Plaintiff cannot satisfy the third prong required for a preliminary injunction.

Finally, as the Court considers the three preliminary injunction factors, it must also consider the required bond if it were to grant Plaintiff's request for injunctive relief. In South Carolina, injunction bonds are *mandatory*, and nominal bonds are not allowed. Instead, the Court must expressly condition the effectiveness of any injunction on Plaintiff's posting of a bond sufficient to pay *all* damages that Valara would incur if it is wrongfully enjoined. Given that Plaintiff asks this Court to enjoin a multi-billion development project a year after construction began, it should come as no surprise that those damages would be immense. As detailed further below, even a short-term stop-work order would result in damages of approximately $2.75 million *per day*; while a long-term injunction, lasting for the duration of this litigation, would irreparably harm the viability of the HPCC and result in at least $40 million, and up to $60 million, in costs associated with demobilizing the Project, remobilizing the Project once construction is allowed to proceed (including locating, hiring and training over 1,500 new craftsmen after the Project's existing workforce is scattered), and securing the site. And these figures are on top of hundreds of millions of dollars in difficult-to-quantify costs and damages that Valara would incur from an injunction, such as restocking fees, expiring warranties on valuable equipment, contract

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

cancellation penalties, and harm to Valara's business relationships. Conservatively, no injunction should be issued in this case unless and until Plaintiff and/or its members post a bond in the amount of at least $200 million.

In short, although it characterizes the relief it seeks as "warranted to maintain the status quo," Plaintiff's request for an injunction in this case is nothing short of breathtaking. Asserting that the County erred when it issued a development permit *more than a year ago*, Plaintiff asks this Court to stop an ongoing, multi-billion-dollar Project in its tracks—without any consideration given to the incredible loss that stopping the project would cause (including the approximately billion dollars already spent by Valara to construct the Project), the consequences of releasing more than 1,500 craftsmen already working on the site, or the impact on the citizens of Spartanburg County who are counting on the tax dollars and economic benefits that the Project will generate once complete. In seeking such extraordinary relief, Plaintiff bears an equally extraordinary burden. Plaintiff comes nowhere close to meeting it. Plaintiff's Motion should be denied.

FACTUAL BACKGROUND

A. Valara Makes a Historic Investment in Spartanburg County.

This case arises out of Valara's construction of the HPCC, a high-performance computing center on a former Kohler manufacturing facility at a 294-acre brownfield site at 4000 South Pine Street, in an industrial area of Spartanburg, South Carolina (the "Property"). Johnson Aff. ¶¶ 3, 9-10.

The HPCC has been and will be incredibly beneficial to the Spartanburg community, both before and after it is complete. Construction of the facility has involved more than 1,500 skilled workers, many of whom were hired from Spartanburg County, and all of whom create indirect economic benefits for the County's economy by spending a portion of the aggregate $2.4 million in daily wages at local businesses. *Id.* ¶¶ 12-13. Upon its completion, the HPCC will result in

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

more than 150 permanent full-time jobs for Spartanburg County residents, while also generating revenue for regional businesses and suppliers whose services will be required for regular maintenance and operations support. *Id.* ¶ 13. Such does not even count tax revenue—pursuant to a Fee in Lieu of Taxes ("FILOT") agreement between Valara and the County, the facility is expected to generate hundreds of millions of dollars over the life of that agreement in tax revenue—funds that will support local schools, public safety, infrastructure, and services for years to come. *See Id.* It is therefore no surprise, then, that shortly after the Project was announced, local and state officials hailed Valara's proposed HPCC a "game changer," Johnson Ex. 7, and a "milestone moment," Johnson Ex. 2, for the Spartanburg Community.

Recognizing that Spartanburg's residents care about the enjoyment of their homes and the environment just as much as they do about jobs and tax revenue, Valara has committed to being a good neighbor since before breaking any ground. At its own expense, Valara performed comprehensive analyses of the potential environmental impacts of the HPCC, covering soil, groundwater, wetlands, biology, cultural resources, geotechnical conditions, air, and noise, and proceeded with the Project only after determining any such impacts were minimal. Johnson Aff. ¶ 8. In the early stages of construction, Valara remediated pre-existing environmental hazards at the site, resulting from heavy industrial use of the property as a manufacturing facility for the previous six decades (and the Army's use of the site as a training center before that)—including removing asbestos and lead-based paint, remediating a prior on-site landfill, and removing several tons of unexploded ordnance and related materials from the Property. *Id.* ¶¶ 9-11.

Valara has also invested significant consideration and money in plans to mitigate any disturbances resulting from both construction of the Project and the operation of the HPCC. Valara has adjusted site lighting to address complaints from one of Plaintiff's members concerning light

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

pollution. *Id.* ¶ 23. Valara plans to construct berms and other sound barriers. *Id.* ¶¶ 29, 31, 33. To address community concerns about dust flowing from the construction site, Valara is in the process of rolling out a "good-neighbor" program through which it will pay for third-party vendors to clean the homes and cars of neighboring property owners opting to participate (as it did already for one of Plaintiff's members). *Id.* ¶¶ 23, 28. To address traffic concerns, Valara has implemented a traffic management plan to ease congestion. *Id.* ¶ 30. And to address the emissions from the gas turbines it will be installing to power the facility, Valara will be implementing a Continuous Emission Monitoring System on the Property. *Id.* ¶ 36.

B. Valara Obtains the Necessary Permits to Construct the HPCC.

From the outset, Valara has been transparent with the Spartanburg County officials charged with regulating developments like the HPCC, as well as with Spartanburg residents.

In early 2025, the Spartanburg County Council held a number of public meetings where the then-proposed HPCC was discussed. *Id.* ¶ 16; *see also* Johnson Exs. 3, 4, 5. And contemporaneous news articles and press releases provided extensive information about the Project to the Spartanburg County community. As early as February 18, 2025, a local news outlet reported that the Project involved a "high performance computing facility." Johnson Ex. 6. And the day after the April 21 County Council meeting, NorthMark issued a press release "announc[ing] its plans to transform the former Kohler manufacturing facility . . . into a state-of-the-art high-performance computing . . . center." Johnson Ex. 8. Notwithstanding Plaintiff's claims that it was "misled" about the scope of the Project, Valara's press release disclosed the full size of the HPCC, the multi-phased development approach, Valara's intention to self-generate power to protect "the community's power supply," and that Valara "ha[d] already begun intensive environmental remediation efforts at the site to enhance the overall health of the building and the surrounding land" to address any environmental concerns. *Id.* Local news outlets reported on

Valara's press release and provided additional color explaining the differences between a traditional data center and a high-performance computing center. Johnson Exs. 9-10.

Valara's transparent and collaborative approach continued throughout the permitting and pre-construction phases of the Project. In March 2025, Valara reached out to a Senior Planner in the Spartanburg County Planning & Development Department (the "Planning Department"), disclosing the size of the property, its intention to convert the site from a manufacturing facility to a high-performance computing center, and its need to demolish and remediate the current infrastructure during Phase I of the Project. Amador Aff. ¶ 5. Valara specifically inquired whether the Planning Department would require a Minor or Major Land Development Permit for work to the current infrastructure. *Id.* The County's Senior Planner responded that the Project, as a change of use, required a Minor Land Development Permit. Amador Aff. ¶ 6. Valara subsequently attended a Collaborative Development Review Meeting with Planning Department employees to discuss the preliminary site plan and confirm the permitting requirements. Amador Aff. ¶ 7. Consistent with historical practice—in which the Planning Department has treated large-scale developments that do not fall within the ULMO's specified "Major" uses as Minor Land Developments regardless of the projects' size, Oakman Aff. ¶¶ 9-11—the Planning Department once again confirmed that a Minor Land Development application was appropriate. Amador Aff. ¶ 7.

Accordingly, on July 11, 2025, Valara submitted a Minor Land Development application for Phase I construction ("Phase I Application"), including the information required by the ULMO. Amador Aff. ¶¶ 9-10. On July 30, 2025, the Planning Department provided Valara with its comments to the overall site plan and site improvement plan, which Valara promptly addressed and then submitted a revised Phase I Application on August 1, 2025. *Id.* ¶ 10. The Planning

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

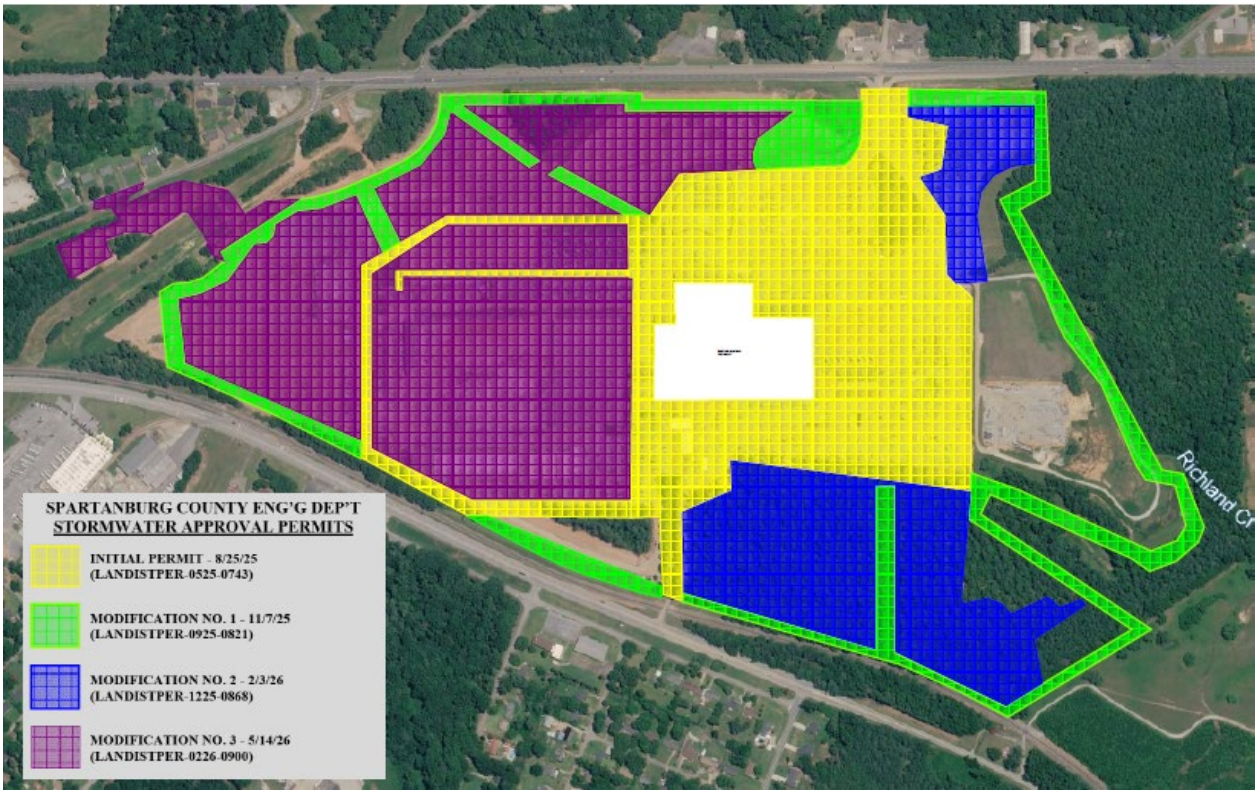
Department conditionally approved Valara's resubmitted Phase I Application on August 4, 2025, and after final approval, the County issued Valara a land development permit on August 27, 2025 ("Phase I Land Development Permit"). *Id.* ¶ 11. Phase I construction thus commenced.

Valara followed the same collaborative process once it finalized plan designs for Phase II of the Project. On February 27, 2026, Valara held a call with Planning Department staff, who confirmed that a Minor Land Development application would be needed for the Phase II construction of a driveway and metering station. *See id.* ¶ 13. Accordingly, on April 6, Valara submitted its second Minor Land Development application ("Phase II Application"), which once again included the information the ULMO requires. *Id.* ¶ 14. On April 16, Planning Department staff met with Valara to discuss comments to the Phase II Application, which Valara addressed through an amended application on April 27, 2026. *Id.* And on May 13, 2026, the Planning Department issued conditional approval of the Phase II Application. *Id.* ¶ 15. The County has not yet issued a "Phase II Land Development Permit" (collectively with the Phase I Land Development Permit, "Land Development Permits"). Oakman Aff. ¶ 11.

The Land Development Permits are not the only permits that authorize work on the Project site. The County also issues land disturbance permits that authorize clearing, removal of vegetation, stripping, and grading; building permits that authorize construction of new structures or alteration of existing ones; and demolition approvals that authorize tearing down existing structures, and Valara has applied for and received each of these permits as required. Amador Aff. ¶¶ 18-25; Brown Aff. ¶¶ 13-19. Most notably, the County has issued and approved several amendments to Valara's land disturbance permits (collectively, the "Land Disturbance Permits"), with the most recent amendment approved on May 14, 2026, following the issuance of conditional approval of the Phase II Application. Amador Aff. ¶¶ 20-23. That amendment authorized tree-

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

clearing and mass grading activities on an additional 67.7 acres of the Property. *Id.* ¶ 23. These permits—most of which Plaintiff fails to acknowledge in its Motion—are shown in the following figure, using the near-identical drone footage included in Plaintiff's Motion, demonstrating that all work on the HPCC is being carried out pursuant to validly issued permits:



Amador Ex. 6.

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

Construction on the Project commenced soon after the Phase I Land Development Permit was issued on August 27, 2025. Since then, over 1,000 craftsmen have been engaged for the Project, materials and equipment have been ordered and transported to the site, and approximately a billion dollars has been spent. Johnson Aff. ¶¶ 12, 39, 42. None of this has been done in secret: land has been graded, trees have been cleared, and buildings have been partially constructed, all visible to the public. *Id.* ¶¶ 9, 12, 37, 40-41. And none of the construction should come as a

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

surprise to anyone—including Plaintiff or its members[3]—given the substantial public disclosures that were made even before construction began. This includes (i) three County Council meetings where the Project was discussed, including disclosure of the FILOT, which made clear that the Project was a more than $2.8 billion high-performance computing facility at 4000 South Pine Street, Johnson Exs. 3, 4, 5; (ii) half a dozen press reports issued before construction commenced, including ones that referenced Valara's multi-phase development approach, Johnson Exs. 2, 6, 7, 8, 9, 10; and (iii) *multiple public* permit applications filed by Valara in which it made clear it was redeveloping "the former Kohler Industrial Plant, . . . comprised of approximately 905,000 square feet of business space," Amador Ex. 1.

Given these facts, neither Plaintiff—an organization formed early this year by several Spartanburg residents for the sole purpose of "slow[ing] down construction" and "eventually stop[ping]" the HPCC, Felk Aff. ¶ 12—nor its members—many of whom allege that they have been watching carefully as construction has proceeded, *see infra*, pp. 17-18—can credibly claim they were not on notice or did not understand the scope of the Project. Indeed, Valara has sent representatives to the homes of Plaintiff's members (and their neighbors) to answer questions about the Project, Felk Aff. ¶ 20; answered written questions submitted by Plaintiff's members, as well as by local community leaders, Johnson Aff. ¶ 21; and is currently holding a series of town halls where community members can receive updates about the Project, *id.* ¶ 19.

Nevertheless, Plaintiff and its members waited nearly a year after the County issued the Phase I Land Development Permit before they commenced this action on July 6, 2026, challenging

[3] Plaintiff's members are Dr. Alva Pack, Mark Felk, Ricky Heath, Kip Darwin, Karen Eilders, Keith Wood, and Jenny Stevens, each of whom allegedly reside near the HPCC. A copy of the affidavits submitted by Plaintiff's members are attached as exhibits to Plaintiff's Motion for Preliminary Injunction.

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

the County's processing of the Phase II Application. On August 12, 2026, Plaintiff filed an Amended Complaint with two new counts that challenged the Phase I Land Development Permit and Valara's construction activities. *See* Am. Compl. ¶¶ 92-107. The Amended Complaint alleges that Valara violated the ULMO by filing two Minor Land Development applications rather than a single Major Land Development application, and by exceeding the scope of the Phase I Land Development Permit. *Id*. Plaintiff seeks declarations that: (i) any proposed development on the HPCC must be submitted as a Major Land Development application under the ULMO; (ii) the County improperly issued the Phase I Land Development Permit in violation of the ULMO; (iii) the County must cease processing the Phase II Application; and (iv) Valara's ongoing construction activities violate the ULMO. *Id.*, Prayer for Relief ¶¶ 1-3, 5-6. The Amended Complaint also seeks permanent injunctions prohibiting Valara from continuing with any construction on the Project, as well as an injunction prohibiting the County from processing any future Minor Land Development applications for the HPCC. *Id.*, Prayer for Relief ¶¶ 4, 7.

Even though it sought *permanent* injunctive relief, Plaintiff did not move for *preliminary* injunctive relief when it filed its Complaint or even its Amended Complaint. Instead, it waited another six weeks, and on August 19, 2026—just shy of a year after Valara received its Phase I Land Development Permit and commenced development of the HPCC, and after Valara expended approximately a billion dollars on labor, material and equipment—Plaintiff filed the instant Motion seeking to enjoin any further construction on the Project.

LEGAL STANDARD

South Carolina courts have warned that a preliminary injunction is "a drastic [remedy] and ought to be applied with caution." *Strategic Res. Co. v. BCS Life Ins. Co.*, 367 S.C. 540, 544, 627 S.E.2d 687, 689 (2006). "To obtain an injunction, a party must demonstrate irreparable harm, a likelihood of success on the merits, and the absence of an adequate remedy at law." *Richland*

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

Cnty. v. S.C. Dep't of Revenue, 422 S.C. 292, 310, 811 S.E.2d 758, 767 (2018). "The party seeking an injunction has the burden of demonstrating facts and circumstances warranting an injunction." *Strategic Res. Co.*, 367 S.C. at 544, 627 S.E.2d at 689.

Plaintiff's burden is heavy under the facts of this case. "[T]he inherent purpose behind the equitable remedy of an injunction" is "to preserve the status quo." *Cnty. of Richland v. Simpkins*, 348 S.C. 664, 671, 560 S.E.2d 902, 905 (Ct. App. 2002). Where, as here, the movant seeks to halt an entire project and alter "the parties' positions pending the final hearing on the underlying merits of the actions" based on allegations that an ordinance was violated, it must "prove a violation [of the ordinance] to entitle them to an injunction." *Id.* at 669-71 (affirming denial of a preliminary injunction under S.C. Code Ann. § 6-29-950(A) because "[c]losing [the non-movant's business] without first adjudicating the merits of the [alleged violations] would not preserve" the status quo); *see also FOC Lawshe Ltd. P'ship v. Int'l Paper Co.*, 352 S.C. 408, 417, 574 S.E.2d 228, 233 (Ct. App. 2002) (holding that a factfinder must decide the merits "before the court can justify imposing an injunction prohibiting" the status quo). Further, because Plaintiff, in Count I and II, seeks to enjoin the County "in the performance of actions or duties provided by statute, there must be allegations or a showing that the [County] . . . has exercised its power in an arbitrary, oppressive or capricious manner." *S.C. Dep't of Rev.*, 422 S.C. at 310, 811 S.E.2d at 767.[4]

[4] For the avoidance of doubt, Plaintiff's invocation of a statute that authorizes injunctive relief does not lessen its burden. Although Section 6-29-950(A) permits neighboring property owners to seek injunctive relief to remedy ordinance violations, it does not displace the equitable prerequisites to injunctive relief, and South Carolina courts have not treated it as doing so. In *Simpkins*, for example, the Court of Appeals affirmed the denial of a preliminary injunction sought under Section 6-29-950(A) precisely because the movant had not yet proven the alleged zoning violation and because the requested relief would not preserve the status quo. 348 S.C. at 669-71. A statutory cause of action supplies the vehicle for relief; it does not relieve the movant of proving irreparable harm, likelihood of success, and the absence of an adequate remedy at law. Plaintiff must satisfy each element, and, as discussed below, it has satisfied none.

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

ARGUMENT

For the reasons set forth below, Plaintiff has not carried its heavy burden, failing to satisfy *any* of the elements it must prove for an injunction to halt construction of the HPCC, and its Motion should be denied.

I. PLAINTIFF WILL NOT BE IRREPARABLY HARMED WITHOUT AN INJUNCTION.

Before an injunction can issue, Plaintiff must show that "it would suffer irreparable harm if the injunction is not granted." *Strategic Res. Co.*, 367 S.C. at 544, 627 S.E.2d at 689. Plaintiff's purported harms must be "*likely*, not merely possible," and it must demonstrate "that the requested injunction would meaningfully prevent the harm." *Hamadneh v. Grand Strand Reg'l Med. Ctr., LLC*, No. 4:26-cv-0335-JD-TER, 2026 WL 395980, at *3 (D.S.C. Feb. 12, 2026) (citing *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008)). Speculative allegations of future harm do not suffice—Plaintiff must show an "*immediate*, irreparable harm." *Compton v. S.C. Dep't of Corr.*, 392 S.C. 361, 366, 709 S.E.2d 639, 642 (2011).

Plaintiff has failed to demonstrate irreparable harm here for at least two reasons. *First*, Plaintiff's lack of urgency belies its claim of immediate, irreparable harm absent an injunction: it waited sixteen months after the Project was announced and nearly a year after construction commenced to seek injunctive relief. Because Plaintiff delayed seeking relief despite ample opportunity to act, an injunction would not even remedy many of its purported harms, whereas the harm Valara and the Spartanburg community would suffer from an injunction has increased substantially. Equity should not reward Plaintiff's delay and lack of diligence. *Second*, even if Plaintiff had not improperly delayed seeking relief, its alleged harms would not be sufficient to justify an injunction because they are speculative and/or are merely fears and concerns of future injury, which do not constitute immediate irreparable harm.

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

A. Plaintiff Delayed Seeking Relief Despite Ample Opportunity to Act.

It is axiomatic that "equity aids the vigilant and diligent," not those who sit on their rights. *Collins v. Sigmon*, 299 S.C. 464, 468, 385 S.E.2d 835, 837 (1989). For that reason, a "period of delay" can "indicate an absence of the kind of irreparable harm required to support a preliminary injunction." *Quince Orchard Valley Citizens Ass'n, Inc. v. Hodel*, 872 F.2d 75, 80 (4th Cir. 1989). *Hodel* is instructive. There, two local citizens' organizations sought declaratory and injunctive relief to halt construction of a new four-lane road, alleging that county officials and federal agencies "failed to comply with environmental laws." *Id.* at 75. The plaintiffs in *Hodel* raised similar allegations of irreparable harm that Plaintiff does here—a loss of environmental protections and procedural harms that would "make any future abandonment of" the project "prohibitively expensive." *Compare id.* at 75, 79, *with* Mot. 12-14. But just as Plaintiff did here, the plaintiffs in *Hodel* also waited too long to seek injunctive relief—"a full nine months" after environmental approval was granted and six months after a wetlands construction permit was issued. *Hodel*, 872 F.2d at 79-80. Based on those facts, the Fourth Circuit affirmed the trial court's denial of a preliminary injunction on the grounds that plaintiffs could not establish irreparable harm because "a long delay in seeking relief indicates that speedy action is not required." *Id.* at 80; *see also NAACP v. City of Myrtle Beach*, No. 4:18-CV-00554, 2018 WL 2332018, at *7 (D.S.C. May 23, 2018) (denying preliminary injunction and noting that "[Plaintiff's] delay cuts against the Plaintiff's claim of irreparable harm").

The opinion in *Hodel* could be written about this case—if anything, the delay here is *more* egregious than in *Hodel*. More than a year ago, the Spartanburg County Council held several public meetings to discuss the Project, Valara issued a press release detailing the Project; and the local press reported extensively on the HPCC. *See supra*, pp. 8-9; Johnson Aff. ¶¶ 16-17. In July 2025, the South Carolina Department of Environmental Services ("DES") posted public

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

notice of the Project and held a two-month comment period, Am. Compl. ¶ 59, Am. Compl. Ex. 3, during which public comments raised the same alleged harm that Plaintiff now claims. Johnson Aff. Ex. 11. Indeed, several of Plaintiff's members concede they had ***actual knowledge*** about the Project either before or shortly after the Phase I Land Development Permit was issued. *See, e.g.*, Pack Aff. ¶ 5 ("I first learned about Valara's project sometime in 2025"); Felk Aff. ¶¶ 8, 10 (acknowledging awareness of permit applications and issuances); Heath Aff. ¶ 4 ("I first learned about Valara Holdings LLC's data center . . . last year, in 2025"). Plaintiff plainly had the information it needed to seek relief for its purported immediate, irreparable injuries in 2025; at a very minimum, Plaintiff and its members were on inquiry notice about the scope of the Project more than a year ago and should have investigated further. Yet their affidavits establish they did practically nothing until Plaintiff commenced this case nearly a year after construction began and finally sought injunctive relief six weeks after that. Simply put, Plaintiff waited too long to now credibly claim an injunction is necessary to stop "*immediate*, irreparable harm." *Compton*, 392 S.C. at 366, 709 S.E.2d at 642.

Likely recognizing that its unreasonable delay poses a dispositive bar to its request for equitable relief, Plaintiff attempts to justify its inaction by claiming that "Valara and the County have misled the public about the true scope of the project." Mot. 1. This is nonsense. At every turn, Valara has been transparent about the nature of the HPCC. For example, Valara's initial press release detailed the Project's multi-billion-dollar price tag, Johnson Aff. ¶ 17; statements by South Carolina officials called the HPCC a "game changer" and a "milestone moment" for the Spartanburg Community, Johnson Exs. 2, 7; Valara's Phase I Application detailed that it was redeveloping "905,000 square feet of business space," Amador Ex. 1; and Valara's Phase II

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

Application, filed five months ago, detailed that Valara was constructing four new buildings comprising 500,000 square feet of space and a power yard, Amador Ex. 3.

And if all that were not enough, Plaintiff's members plainly could see for themselves the scope of construction at the Property. Dr. Pack claims that he "first realized something was off in March 2026"—***five months*** before Plaintiff sought injunctive relief—"when the massive scale of construction started to become apparent to neighbors like me." Pack Aff. ¶ 7. Mr. Heath says he got an "inkling" that there was more to the Project "in March or April of this year." Heath Aff. ¶ 6. Mr. Felk claims that he "realized that everything I originally understood about the project was a bold-faced lie"—which, to be clear, it was not—"[e]arlier this year." Felk Aff. ¶ 9. And Mr. Wood notes that Valara's proposed investment was "substantial from the beginning," and even if he were correct (he is not) that "most residents were not made aware of the massive nature of the project until the spring of 2026," that was still four to five months before Plaintiff sought an injunction. Wood Aff. ¶¶ 5-6. In sum, even accepting Plaintiff's own version of events, its members understood the Project's scale months before seeking injunctive relief and still did nothing.

In addition to the fact that South Carolina courts will simply not award equitable relief to those who fail to diligently pursue their rights, *Collins*, 299 S.C. at 468, 385 S.E.2d at 837, Plaintiff's improper delay has had two serious *practical* consequences that doom Plaintiff's request for an injunction.

First, Plaintiff has waited so long to seek relief that an injunction would not remedy many of their purported harms. For example, Plaintiff claims its members have suffered an irreparable injury because "Valara has . . . begun clear-cutting large, forested areas," which has "worsened the noise pollution, and harmed local wildlife that members so enjoy." Mot. 12. But, while Plaintiff

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

and its members sat on their hands, the trees have already been cut down, and an injunction cannot bring them back. Johnson Aff. ¶ 37. Likewise, Plaintiff alleges harm associated with the "'incredibly' bright light at night." Mot. 12. But due to Plaintiff's delay, Valara has invested approximately a billion dollars in an open construction site and will need to continue using lights to protect its property and equipment from thieves and vandals, regardless of whether construction continues to proceed. Johnson Aff. ¶¶ 39, 44. And the alleged dust of which Plaintiff complains can only be remedied once the open construction site is completed and foliage planted on ground that is currently open. *Id.* ¶¶ 29, 31, 38. If anything, an injunction will only *prolong* Plaintiff's alleged irreparable injuries by delaying Valara's efforts to plant new trees, install noise and sight buffers, and cover the currently undeveloped areas. *Id.*; *see Coffy v. Graziana*, 2023 WL 4998602, at *11 (D.S.C. Apr. 25, 2023) ("[W]hen requested injunctive relief 'will not prevent irreparable harm to the plaintiffs ... a preliminary injunction is not warranted.'").

Second, while Plaintiff's delay has rendered injunctive relief ineffectual at remedying their purported injury, it has vastly *increased* the irreparable harm that *Valara* would suffer if an injunction is granted. Had Plaintiff moved for relief promptly upon learning of the issuance of the Phase I Land Development Permit it now challenges, it could have sought to preserve the pre-construction status quo while pursuing its administrative remedies before work began. *See Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 601, 553 S.E.2d 110, 121 (2001) ("The sole purpose of a temporary injunction is to preserve the status quo and thus avoid possible irreparable injury to a party pending litigation."). Indeed, an appeal to the Board of Zoning Appeals ("BZA") would have *automatically* stayed issuance of the Phase I Land Development Permit. *See* ULMO § 1.04. But now, the status quo for nearly a year has been Valara carrying out lawful construction activities under validly issued permits that no one ever challenged, with Valara having already

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

spent approximately $1 billion on materials, equipment, and labor, including the two-million hours of construction labor that Valara has invested since March of 2026 when Plaintiff alleges it members first became aware of the Project's scope. Johnson Aff. ¶¶ 11, 40, 42. Granting an injunction will materially disrupt that status quo and cause grave injury to Valara. *See infra*, pp. 36-39. Plaintiff's own cases demonstrate that an injunction is not warranted in those circumstances. *Amoco Prod. Co. v. Vill. of Gambell*, 480 U.S. 531, 545 (1987) (reversing injunction where the company "had committed approximately $70 million to [oil] exploration . . . which they would have lost without the chance of recovery had exploration been enjoined").

Nor will Valara be the only party harmed by a belated injunction caused by Plaintiff's inexcusable delay. An injunction will likely put more than 1,500 construction workers out of work, with a commensurate reduction in the economic benefit to the local economy that those workers' wages provided. *See* Johnson Aff. ¶¶ 12, 42, 45, 48. It will also jeopardize—and, at a minimum, seriously delay—the more than 150 full-time permanent jobs that Valara expects to deploy at the HPCC,[5] and the hundreds of millions of dollars in tax revenue that the County is set to receive after the Project is completed, *see* Johnson Aff. ¶ 13. This Court should not reward the Plaintiff's inexcusable delay by disrupting the status quo and causing significant injury to both Valara and the citizens of Spartanburg County.

B. Plaintiff Has Not Shown an Irreparable Injury.

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

[5] Plaintiff puts this figure at "less than 30" (Mot. 4), but that is because Plaintiff is relying on the *minimum* number of jobs that Valara must create as a requirement of the FILOT agreement. Johnson Aff. ¶ 13 & n.1.

enjoyment of their properties, future harms associated with the HPCC's operation, and loss of a public forum—constitutes an immediate, irreparable injury that can be remedied by an injunction.

1. Plaintiff's Assertions of Loss of Use and Enjoyment Do Not Constitute an Immediate, Irreparable Harm.

Citing inapposite authority from inapplicable contexts,[6] Plaintiff argues that it can show irreparable harm because "[t]he ongoing construction of the [HPCC] . . . has greatly disturbed members' use and enjoyment of their properties." Mot. 11-12. In addition to the facts that one of Plaintiff's members recently publicly conceded that there is currently no "noise problem," Johnson Aff. ¶ 25, and that, as noted above, an injunction would not remedy these alleged harms but would rather only prolong them, there are two problems with Plaintiff's reliance on this purported harm.

First, in the zoning context, the South Carolina Supreme Court has held that the very alleged harms Plaintiff asserts—increased traffic, noise, airborne particulate matter, pollution, visual blight, and harm to the local environment—do not give rise to an injury-in-fact, let alone an irreparable one. *Carnival Corp. v. Historic Ansonborough Neighborhood Ass'n*, 407 S.C. 67, 76-

[6] For example, Plaintiff relies on *AJG Holdings LLC v. Dunn*, 382 S.C. 43, 52, 674 S.E.2d 505, 509 (Ct. App. 2009), to support the proposition that increased "noise and traffic in the neighborhood" interferes with its members' use and enjoyment and constitutes an irreparable injury. Mot. 11. But *AJG Holdings* involved a restrictive covenant, which "will be enforced regardless of the amount of damage that will result from the breach," so "the mere breach alone is grounds for injunctive relief." *Id.* at 51. That principle simply does not apply where, as here, a restrictive covenant is not involved. Likewise, Plaintiff selectively quotes *Amoco*, 480 U.S. at 545, to assert that environmental injuries are irreparable. Mot. 11. But in the very next sentence of its opinion, the Supreme Court clarified that the alleged environmental injury must be "sufficiently likely." *Amoco*, 480 U.S. at 545. It also explicitly rejected the lower court's "presumption" that plaintiff was irreparably injured by "an agency['s] fail[ure] to evaluate thoroughly the environmental impact of [the] proposed action," found that plaintiff's alleged injury "was not at all probable," and held that an injunction was not warranted since the defendants already "committed approximately $70 million to [oil] exploration . . . which they would have lost without chance of recovery had exploration been enjoined." *Id.* at 544-45.

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

78, 753 S.E.2d 846, 851-52 (2014) (increased traffic and noise pollution are not a "particularized harm"); *see also* MTD Mem. 28-29.

Second, Plaintiff cannot establish its purported harms through the evidence it has submitted. For example, it has not established that construction on the Project is the cause of the alleged increases in dust, wildlife deaths, or health effects, particularly given the other industrial activity in the surrounding areas, including several manufacturing plants, chemical facilities, and oil and gas companies all within a three mile radius. Johnson Aff. ¶ 10; *id.* Ex. 1. Instead, Plaintiff's affiants offer only their personal lay speculation that the Project is the cause of the harms they allege—*i.e.*, both that there has actually been an appreciable increase in dust, noise, and traffic, *and* that any such increase is attributable to the Project. They offer no soil analysis, noise studies, traffic studies, air quality reports, property valuations, epidemiological reports or even doctor's letters; nothing by which this Court could conclude that the Project has *actually* caused any harms to Plaintiff or its members at all. And given that Plaintiff's members chose to live in an industrial neighborhood—including, in some cases, directly across the street from a then-active, 500,000-square-foot Kohler manufacturing facility with a history of asbestos, lead-based paint, and an on-site landfill, *see id.* ¶¶ 9-11—Plaintiff cannot possibly establish from the speculative lay testimony of its members that the Project caused or exacerbated any respiratory or other health issues. *Charleston Dev. Co., LLC v. Alami*, 433 S.C. 533, 542-43, 860 S.E.2d 687, 692 (Ct. App. 2021) ("[B]elief that it is 'reasonable' to assume [defendant's] actions have caused [plaintiff]" harm is insufficient to establish injury-in-fact).

2. Plaintiff's Speculative Allegations of Future Harm Once the HPCC Begins to Operate Cannot Constitute an Immediate, Irreparable Harm.

Plaintiff also bases its claimed irreparable harm on purported harmful environmental effects and other nuisances from the HPCC once it is operating. Mot. 12-13. Plaintiff is wrong.

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

First, the HPCC will almost certainly not be fully operational until long after this litigation concludes. South Carolina law is clear that "[p]rospective concern" of future harm is not a cognizable injury, so the "fear[s]" and "concern[s]" of Plaintiff's members cannot justify the issuance of a preliminary injunction.[7] *Beaufort Realty Co. v. Beaufort Cnty.*, 346 S.C. 298, 303, 551 S.E.2d 588, 590 (Ct. App. 2001). *Second*, Plaintiff's speculative allegations of future harm are simply unfounded. The HPCC will meet or exceed all applicable environmental regulations through its use of Selective Catalytic Reduction systems and Continuous Emissions Monitoring Systems. Johnson Aff. ¶ 36. Further, Valara plans to install dirt berms and plant trees to address concerns about noise and light pollution and is currently working with a third party to evaluate implementation of permanent sound barriers around the Property. Johnson Aff. ¶¶ 29, 31.

3. Plaintiff Has Not Been Irreparably Harmed by the Alleged Loss of a Public Forum to Challenge the HPCC.

Plaintiff's final theory of irreparable harm—that it has been irreparably deprived of its "rights to comment on, obtain information about, and participate in the County's review of major land developments before they are constructed," Mot. 13—fails as a matter of both fact and law.

As a matter of *fact*, Plaintiff's members have not been deprived of a public forum to comment on the HPCC and participate in the process—to the contrary, they have been airing their grievances for months in several public forums:

- Plaintiff filed a Petition for Declaratory Order and Petition for a Rule to Show Cause against Valara with the Public Service Commission on June 22, 2026, seeking an order

[7] For example, one of Plaintiff's own affiants—Dr. Alva Pack—recently conceded at a special hearing held by the Public Safety Commission of the Spartanburg County Council that there is not a noise problem currently in the neighborhood, and that he is merely concerned about noise that might occur once the HPCC becomes operational in the future. Johnson Aff. ¶ 25. That public statement directly contradicts Dr. Pack's sworn affidavit in which he stated: "The construction noise is another problem. The cranes and other heavy machinery building the data center make loud noises for early morning until late at night. I can hear these noises from my property and inside my home." Pack Aff. ¶ 10.

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

to stop construction (the "PSC Action"). Many of the Plaintiff's affiants submitted nearly identical affidavits in the PSC Action.[8]

- Plaintiff and its members participated in a recent DES public meeting, held June 25, 2026, regarding the amendment to Valara's air permit. Over 100 pages of the hearing transcript are dedicated to public comment. Johnson Ex. 11.

- Plaintiff and its members also participated in recent County Council meetings, held August 17, 2026, and September 9, 2026, concerning a potential data center moratorium.[9]

- Plaintiff and its members have been airing their grievances about the HPCC on Facebook for nearly a year.[10]

Plaintiff's assertion that it has suffered from a lack of non-misleading information is similarly meritless. Valara, County officials, and the independent press have provided the public with extensive information about the HPCC. *See supra*, pp. 8-9. Contemporaneous news reports undermine any assertion that Plaintiff's members were misled. For example, Plaintiff says that a comment by a local official—not Valara—that the HPCC was "not a data center" was misleading, Mot. 4, but an April 22, 2025, news article explained the difference between high-performance computing centers and traditional data centers in depth. Johnson Ex. 10. And while Plaintiff also claims that a local official falsely said that the HPCC would "not use more power than the . . . site's existing facility," Mot. 4, that statement referred to the HPCC's public energy consumption and was true: the HPCC will generate its own power to minimize strain on the public grid, Johnson Aff. ¶ 17.

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[8] *Concerned Citizens of Spartanburg County v. Valara Holdings LLC*, Docket No. 2026-158-E, Dkt. ID 339099, available at https://dms.psc.sc.gov/Web/Dockets/Detail/119739.

[9] Ashley Listrom, *Spartanburg County delays vote on data center moratorium*, FOX CAROLINA (Aug 17, 2026) https://www.foxcarolina.com/2026/08/18/spartanburg-county-delays-vote-data-center-moratorium/ [https://perma.cc/7LTE-V73Y].

[10] No Data Centers in Spartanburg, FACEBOOK https://www.facebook.com/groups/1354334266189772/.

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

If anything, Plaintiff and its members have already received extensive information through public filings, meetings, media coverage, and Valara's broad outreach, and the Major Land Development process and would not necessarily have required materially different substantive submissions, since that process would not actually have required Valara to make further disclosures or provide any more information: the submittal checklists are the same, as is the "Information Required to Support Application" in Table 2 of the ULMO. Amador Aff. ¶ 17.

As a matter of *law*, Plaintiff's theory of irreparable harm simply is not supported by its out-of-state authority. Plaintiff cites *NRDC v. Houston*, 146 F.3d 1118, 1129 (9th Cir. 1998), for the proposition that "[t]he failure to respect the process mandated by law cannot be corrected with post-hoc assessments of a done deal." Mot. 14. But *NRDC* had nothing to do with irreparable harm; it was a mootness issue. *NRDC*, 146 F.3d at 1128-29. Plaintiff's process-related claims will not be mooted absent injunctive relief: not only can Plaintiff continue to pursue this lawsuit (to the extent it is not dismissed on the merits), but Plaintiff still has an avenue to appeal any decision from the County on Valara's Phase II Application. Plaintiff also cites *Sierra Club v. Marsh*, 872 F.2d 497 (1st Cir. 1989), but that case—which dealt with a federal statutory regime, the National Environmental Policy Act, that is simply not relevant here—actually supports *Valara*, not *Plaintiff*. While Plaintiff asserts that the First Circuit found a "preliminary injunction [was] warranted," Mot. 14, in reality the court merely remanded the case for further proceedings. *Sierra Club*, 872 F.2d at 505. On remand, the trial court noted that "the risk of bureaucratic commitment," *i.e.*, that regulators will not be willing to change course in the future, "*does not necessarily result in irreparable harm*." *Sierra Club v. Marsh*, 714 F. Supp. 539, 590 (D. Me. 1989), *aff'd*, 976 F.2d 763 (1st Cir. 1992). And while the trial court ultimately held that there *was* irreparable harm in that case, it did so specifically because the proceeding involved "an attempt to enjoin the

resumption of construction on a project in circumstances *where the largest portion of the construction costs has yet to be committed*." *Id.* Here, due to Plaintiff's unreasonable delay, Valara has *already* committed a significant portion of the anticipated construction costs for the Project—*approximately a billion dollars*. Johnson Aff. ¶ 39. Thus, even under Plaintiff's own authority, Plaintiff cannot establish irreparable harm through a purported loss of "major" development review. *See also Hodel*, 872 F.2d at 80 (no irreparable injury from continued construction even though "any further commitment of resources . . . could make any future abandonment . . . prohibitively expensive").

II. PLAINTIFF CANNOT SUCCEED ON THE MERITS.

"A trial court may consider a case's merits to the extent necessary to determine whether a temporary injunction should issue." *Greenville Bistro, LLC v. Greenville Cnty.*, 435 S.C. 146, 162, 866 S.E.2d 562, 570 (2021). Although Plaintiff claims that it must make only "a prima facie showing" that it is entitled to injunctive relief, Mot. 14, that is not the standard here. Because Plaintiff seeks to alter the status quo and shut down Valara's business, Plaintiff must satisfy the higher standard of "prov[ing] a violation [of the ordinance] to entitle them to an injunction." *Simpkins*, 348 S.C. at 670, 560 S.E.2d at 905. Regardless of the standard that applies, however, Plaintiff cannot meet it, as it has failed to make even a prima facie showing that it will succeed on any of the claims in its Amended Complaint.

A. Plaintiff Cannot Succeed on the Merits Because It Has Not Exhausted Administrative Remedies.

South Carolina law is clear that "the exhaustion of administrative relief available to a party is necessary before the party can seek redress in the courts." *Lominick v. City of Aiken*, 244 S.C. 32, 44, 135 S.E.2d 305, 310 (1964). Relying on that principle, South Carolina courts have refused to hear initial challenges to local zoning administrators' decisions for over sixty years.

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

See, e.g., *id.*; *Moore v. Sumter Cnty. Council*, 300 S.C. 270, 274, 387 S.E.2d 455, 458 (1990); *Dunbar v. City of Spartanburg*, 266 S.C. 113, 118, 221 S.E.2d 848, 850 (1976); *Charleston Dev. Co.,* 433 S.C. at 544-46, 860 S.E.2d at 693-94. Instead, neighboring property owners who wish to challenge a zoning administrator's decision must first avail themselves of the "administrative mechanism[s] designed to enforce [local] zoning ordinance[s]" before seeking relief in the courts. S.C. Code Ann. §§ 6-29-780(A), 6-29-800(A)(1). Plaintiff's failure to do so here dooms its claims.

In Counts I and II, Plaintiff challenges the Phase I Land Development Permit and the Phase II Application, claiming that the HPCC is "clearly a 'major' land development unlawfully being processed as a 'minor' land development." Mot. 20, 25. But the ULMO is clear that the classification of permit applications rests with the SCA in the first instance. *See, e.g.*, ULMO § 1.01 ("It shall be the responsibility of the [SCA] . . . to administer the requirements for processing applications and issuing permits in accord with the provisions of this Ordinance"). If neighboring property owners disagree with any "order, requirement, decision, or determination" made by the SCA, such as a permit application classification decision, the Planning Act and the ULMO provide them with the exclusive administrative remedy—appeal the challenged decision to the BZA "within 10 days of the date of the action."[11] ULMO § 1.04; *see also* S.C. Code Ann. §§ 6-29-

[11] Plaintiff implies that its members did not need to comply with the ULMO's purportedly "vague appeals process" because they "did not receive timely notice from the County of the issuance of the" Phase I Permit. Mot. 32. Plaintiff is wrong. The ULMO could not be clearer: Plaintiff was required to appeal "within 10 days of *the date of the action*," not within ten days of being on notice of the permit. ULMO § 1.04 (emphasis added). Further, even assuming the ULMO's appeal process is subject to the discovery rule, Plaintiff still failed to appeal within the requisite time. "Under the discovery rule, the statutory period of limitations begins to run when a person *could or should have known*, through the exercise of reasonable diligence, that a cause of action might exist in his or her favor, rather than when a person obtains actual knowledge of either the potential claim or the facts giving rise thereto." *Abba Equip., Inc. v. Thomason*, 335 S.C. 477, 485, 517 S.E.2d 235, 239 (Ct. App. 1999). Plaintiff's own affiants concede that they could or should have known that an appeal might exist in their favor in March 2026 at the latest. *See supra*, p. 8. But they still waited months after that before bringing suit in this Court.

780(A), 6-29-800(A)(1) & (B). Only after that administrative remedy has been exhausted can neighboring property owners present their grievances to the circuit court. *Id.* § 6-29-820(A).

Here, none of Plaintiff's members bothered to pursue—much less exhaust—their administrative remedies. With respect to the Phase I Land Development Permit, issued on August 27, 2025, Plaintiff waived any challenge because it failed to appeal the SCA's decision to issue the permit within ten days. *See, e.g.*, *Botany Bay Marina, Inc. v. Townsend*, 296 S.C. 330, 334, 372 S.E.2d 584, 585-86 (1988) (failure to appeal zoning decision in the required time divests the appeal board of jurisdiction to hear the appeal), *overruled on other grounds by Woodard v. Westvaco Corp.*, 319 S.C. 240, 460 S.E.2d 392 (1995); *Lominick*, 244 S.C. at 44 (neighbor who failed to appeal a building permit issuance in the required time "cannot . . . attack the validity of" the permit's issuance); *see also Palumbo v. Waste Techs. Indus.*, 989 F.2d 156, 161 (4th Cir. 1993) (refusing to allow plaintiff to "circumvent the limitations period" by bringing a plenary action in the district court outside of the statutory appeal window). And with respect to the Phase II Application, Plaintiff's challenge is premature: as Plaintiff concedes, the Phase II Application remains under review. *See* Am. Compl. ¶ 104. Thus, there is no final administrative decision to appeal, and Plaintiff must first exhaust its administrative remedies with respect to the Phase II Application before seeking redress in this Court. *Lominick*, 244 S.C. at 44, 135 S.E.2d at 310.

For similar reasons, Plaintiff cannot succeed on Count III, which argues that Valara has violated the ULMO by "drastically exceeding the permitted boundary." Mot. 27. But the ULMO expressly permits Plaintiff to file a complaint alleging an ordinance violation. ULMO § 1.17. If a complaint is submitted, the SCA "shall record and investigate such complaint, and take such action as provided by this Ordinance," including "issu[ing] a stop work order" or "withholding permits"—the very remedies that Plaintiff asks this Court to order. *Id.* §§ 1.17-1.18. If the SCA

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

determines that no violation has occurred, then Plaintiff can appeal that determination to the BZA, *id.* § 5.02-2(1), and then to this Court. S.C. Code Ann. § 6-29-820(A). Alternatively, Plaintiff could submit a complaint under the Storm Water Management Ordinance and Regulations. *See* Brown Aff. ¶¶ 11-12, 21. Because Plaintiff has done none of these things, Plaintiff has no likelihood of success on the merits because South Carolina law prohibits it from "circumvent[ing] the exhaustion of administrative remedies requirement by seeking to challenge the enforcement of a zoning ordinance under" Section 6-29-950. *Charleston Dev. Co.*, 433 S.C. at 544, 860 S.E.2d at 693.

B. Plaintiff Cannot Succeed on Counts I and II Because Valara's Minor Land Development Applications Did Not Violate the ULMO.

Even if Plaintiff had properly exhausted its administrative remedies and had ripe claims, those claims would fail on the merits. In South Carolina, "[t]he cardinal rule of statutory construction is that courts will ascertain and effectuate the intent of the lawmaking body," and "[i]n ascertaining the intent of the lawmaking body, the ordinance must be read as a whole; sections which are part of the same general statutory law must be construed together and each given effect if it can be done by any reasonable construction." *Historic Charleston Found. v. Krawcheck*, 313 S.C. 500, 504, 443 S.E.2d 401, 404 (Ct. App. 1994). Where, as here, the ordinance's "language is plain and unambiguous and conveys a clear and definite meaning, . . . the court has no right to look for or impose another meaning." *Boehm v. Town of Sullivan's Island Bd. of Zoning Appeals*, 423 S.C. 169, 185, 813 S.E.2d 874, 882 (Ct. App. 2018).

The plain language of Section 1.02(1) and Exhibit A of the ULMO, read as a whole, conveys a clear and definite meaning for the defined term "Major Land Development." Section 1.02(1) provides that the defined term Major Land Development "includes but is not limited" to a series of property uses and "similar developments." ULMO § 1.02(1). Exhibit A

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

fills the gaps left by the phrases "includes but is not limited to" and "similar developments," by providing an exhaustive list of fourteen additional property uses that were either not included in, or are "similar" to, the uses enumerated in Section 1.02(1), and stating that "[a]ll other [u]ses [n]ot [c]lassified as Major" are included in the "Minor Land Development" category. ULMO Ex. A.

Notwithstanding that the County has had the chance to add them during any of the 24 amendments it made to the ULMO since its adoption, computing and data centers are ***not*** included among the property uses that fall within Section 1.02(1) and Exhibit A's "Major Land Development" category and are therefore unambiguously a "Minor Land Development." *Id.*[12] Nor did the County ever amend the ULMO to require the SCA to perform a totality of the circumstances or Plaintiff's preferred size-and-cost test when determining whether a given property is properly classified as a Major or a Minor Land Development.[13] ULMO § 1.02(1), Ex. A. Indeed, neither Section 1.02(1) nor Exhibit A of the ULMO reference, much less require any consideration be given to, a property's acreage, square footage, megawatts, investment amount, or overall scale. *Id.* Accordingly, to imply such an analysis into ULMO would be at odds with its

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[12] Plaintiff also argues that Valara's phased development approach violates the ULMO because the "entire project" must be "considered to determine whether it is a major or minor development." Mot. 24. This argument is based on a false premise—the County *did* consider the entire project, as it was aware of the scope of the Project from the very beginning—and is again belied by the ordinance's plain text, which, like the South Carolina Planning Act, explicitly contemplates phased projects. ULMO § 2.02-2 Tbl. 4 (referring to "phased" projects); S.C. Code Ann. § 6-29-1520(7) (referring to a "Phased development plan"). There is nothing "unlawful" about Valara's phased development approach.

[13] County Council knew how to amend the ULMO to impose a totality of the circumstances test if they so intended—it recently amended its noise ordinance to impose such a test. Noise Ordinance Amendment (O-26-14), available at https://www.spartanburgcounty.gov/DocumentCenter/View/106895/Noise-Ordinance-Amendment-O-26-14 [https://perma.cc/2K7L-TBFP]. The fact that it did not amend the ULMO to contain a similar test must be given weight. *S. Bell Tel. & Tel. Co. v. Hamm*, 306 S.C. 70, 74, 409 S.E.2d 775, 777 (1991).

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

express language—and would also render meaningless the "[a]ll other [u]ses [n]ot [c]lassified as Major" clause in Exhibit A, in favor of roaming definition of "Major" guided solely by what *feels* major to the County or neighboring residents.

The SCA has interpreted the ULMO consistent with its plain language for years—approving several very large developments as Minor, Oakman Aff. ¶¶ 9-10—and this Court must give the SCA's long-standing interpretation "some consideration and not overrule[] [it] without cogent reasons therefor," *Purdy v. Moise*, 223 S.C. 298, 305, 75 S.E.2d 605, 608 (1953). Plaintiff has offered no such cogent reason. Instead, it simply asks the Court to add words to the ULMO that do not exist and cast aside the lawmakers' definition of Major Land Development in favor of the purported "ordinary usage," of the terms "major" and "minor," which Plaintiff asserts requires the Court "to engage in a common-sense, comparative analysis." Mot. 23. But "[t]he court has no right to add the words [the legislature] omitted," *Consumer Advoc. for State v. S.C. Dep't of Ins.*, 397 S.C. 599, 602, 725 S.E.2d 708, 710 (Ct. App. 2012), and ordinary usage cannot supplant the definition that local lawmakers provided: "the relevant question is not whether" the HPCC is a major land development under ordinary meaning but whether it is a Major Land Development "*as the [ULMO] defines that phrase*." *Van Buren v. United States*, 593 U.S. 374, 388 (2021) (emphasis in original). It is not, and Plaintiff cannot supplant the ULMO's defined term for its own preferred interpretation.[14]

Alternatively, even if the Court concludes that Section 1.02(1) should not be read in conjunction with Exhibit A (it should be), the HPCC still would not fall under Section 1.02(1)'s

[14] Of course, even if Plaintiff's interpretation of the ULMO's use of the term "Major" were correct, the County's application of the term would be entitled to great "deference," as it is "[t]he local zoning boards, and not the courts, are the primary entities responsible for the planning and development of our communities." *Furr v. Horry Cnty. Zoning Bd. of Appeals*, 411 S.C. 178, 185, 767 S.E.2d 221, 225 (Ct. App. 2014).

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

definition of a Major Land Development. Under the doctrine of *ejusdem generis*, "[w]here general words follow specific words in a statutory enumeration, the general words are construed to embrace ***only*** objects similar in nature to those objects enumerated by the preceding specific words." *Cir. City Stores, Inc. v. Adams*, 532 U.S. 105, 114-15 (2001); *see also Cooper River Bridge v. S.C. Tax Comm'n*, 182 S.C. 72, 72, 188 S.E. 508, 510 (1936) (noting the adoption of and applying the *ejusdem generis* doctrine under South Carolina law). The developments specifically enumerated in Section 1.02(1) are "commercial and industrial parks and subdivisions, townhouse developments, shopping centers, manufactured home parks, condominium and apartment complexes, and similar developments." ULMO § 1.02(1). The relevant common attribute among these specified developments is ***form*** not size, impact, or cost. *See Sw. Airlines Co. v. Saxon*, 596 U.S. 450, 458 (2022) (*ejusdem generis* focuses on the "common attribute[s]" shared by the specific items). Each listed development is a planned, multi-component layout—a park, a subdivision, a center, or a multi-unit complex. The "similar developments" clause therefore reaches other developments of that nature and form. It does not reach a single-operator reuse of an existing industrial plant simply because the plant is large or the repurposing is expensive. Under any textual interpretation of the ULMO, the HPCC does not fall into the definition of Major Land Developments.

C. Plaintiff Cannot Succeed on Count III Because All Clearing, Grading, and Excavating Is Authorized by Valara's Land Disturbance Permits.

In Claim III, Plaintiff claims that "Valara's development activities exceed the scope of the [Phase I Land Development Permit] and violate the" ULMO. Mot. 29. Plaintiff provides satellite images of the HPCC site in support, allegedly showing "tree-cutting, grading, and excavating well outside the Phase I boundary." *Id.* The fundamental flaw in Plaintiff's allegations is that, under the ULMO, no land development permit is needed for these activities.

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

First, while the ULMO prohibits land from being "used" or converted to any other "use" without a prior development permit, ULMO § 1.13, the word "use" is a term of art in the zoning context, and it refers to "[t]he purpose or activity for which land or buildings are designed, arranged, or intended, or for which land or buildings are occupied or maintained." *Heilker v. Zoning Bd. of Appeals for City of Beaufort*, 346 S.C. 401, 407, 552 S.E.2d 42, 45 (Ct. App. 2001). Here, Valara's clearing and grading activities do not "use" or "convert" the land to another "use" as to require a land development permit under the ULMO.

Second, the activities that Plaintiff challenges, including "tree cutting . . . [and] mass grading," are properly permitted under Valara's validly issued Land *Disturbance* Permits, Amador Aff. ¶¶ 19-23, 25; Brown Aff. ¶¶ 13-18—none of which Plaintiff actually challenges in this case. Because the Land Disturbance Permits allow Valara to engage in activities such as tree-cutting and grading, which do not constitute land "use" under the ULMO, Plaintiff's allegations that Valara is engaging in such activities are insufficient to state a claim, and Count III fails as a matter of law.[15]

III. PLAINTIFF HAS AN ADEQUATE REMEDY AT LAW.

The party seeking an injunction bears the burden of "prov[ing] it has no adequate remedy at law." *Milliken & Co. v. Morin*, 386 S.C. 1, 8, 685 S.E.2d 828, 832 (Ct. App. 2009). A remedy

[15] For the reasons set forth in Valara's pending motion to dismiss, Plaintiff also lacks standing to pursue Counts II and III of its Amended Complaint because its members lack standing under the Planning Act. MTD Mem. at 28-32; *see, e.g.*, *Carnival*, 407 S.C. at 75-77, 753 S.E.2d at 850-51 (analyzing harms nearly identical to those alleged by Plaintiff's members—such as "major traffic congestion," "noise pollution," "particulate [matter] and other pollutants," "the use and enjoyment of the local environment . . . including their home [and] neighborhoods" and "noncompliance with zoning and environmental laws"—and concluding that the plaintiffs lacked statutory standing because "these allegations are simply complaints about inconveniences suffered broadly by all persons residing in or passing through the City of Charleston").

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

"provided by statute" is a textbook "adequate legal remedy." *Santee Cooper Resort, Inc. v. S.C. Pub. Serv. Comm'n*, 298 S.C. 179, 185, 379 S.E.2d 119, 123 (1989).[16] Here, Plaintiff plainly has an adequate legal remedy: the administrative remedies provided by the Planning Act and the ULMO, which, as described above, Plaintiff was required to exhaust before challenging the issuance of a permit (Count I and II) or alleging non-compliance with an issued permit (Count III) in this Court. *See supra*, pp. 26-29.

In fact, even *Plaintiff* acknowledges that the ULMO provides it with a right to appeal the County's decision to approve a Minor Land Development application and issue a development permit. Mot. 32. But it argues that this remedy is inadequate because "Plaintiff and its members did not receive timely notice from the County of the issuance of the" Phase I Land Development Permit. *Id.* Putting aside that this does not address the remedies still available to challenge the pending Phase II Land Development Permit once issued, Plaintiff is simply wrong. As Plaintiff's members make clear in their affidavits, they were plainly on notice of the HPCC's development and the issuance of the Phase I Land Development Permit. *See supra*, pp. 16-18. In any event, approval of the Phase I Land Development Permit was published on Spartanburg County's Citizen Self-Service Portal, and nothing in the Planning Act or the ULMO requires the County or Valara to provide specific notice of the issuance of a development permit to any particular Spartanburg residents. Plaintiff cites no authority suggesting that a lack of notice renders the administrative

[16] Plaintiff cites *Santee Cooper Resort* in support of its assertion that a legal remedy is adequate only if it is "certain" and "complete." Mot. 31. However, in *Santee Cooper Resort*, the South Carolina Supreme Court actually reversed the lower court's injunction and held that a statutory remedy was "certain" and "complete" and thus provided Plaintiff with an adequate remedy at law. *Santee Cooper Resort*, 298 S.C. at 185. Indeed, "the court's equitable powers must yield in the face of an unambiguously worded statute." *Id.* Plaintiff cannot sidestep the Planning Act's and the ULMO's administrative remedies by arguing that the remedies lawmakers provided are uncertain or incomplete.

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

appeal process an inadequate remedy. And the fact that Plaintiff can no longer appeal the Phase I Land Development Permit (due to its own failure to do so within the time limit provided by the ULMO) "is no ground in itself for allowing [Plaintiff] to seek equitable relief." *Nutt Corp. v. Howell Rd., LLC*, 396 S.C. 323, 329, 721 S.E.2d 447, 450 (Ct. App. 2011) (noting that "the possibility the statute of limitations may have potentially barred the [plaintiff] from obtaining a legal remedy" does not render the legal remedy inadequate); *see also, e.g.*, *Guzman v. Polaris Indus. Inc.*, 49 F.4th 1308, 1312 (9th Cir. 2022) ("[E]quitable relief must be withheld when an equivalent legal claim would have been available but for a time bar."); *Haynes v. City of Durham*, No. 1:12cv1090, 2016 WL 469608, at *7 (M.D.N.C. Feb. 5, 2016) (similar).

Plaintiff next argues that "[a] remedy at law cannot be adequate and complete if . . . the interested party must appeal to the discretion of some other person or body." Mot. 32. Not so. South Carolina courts uniformly hold that where a statute provides a right to appeal, it provides an adequate remedy at law. *See, e.g.*, *Strategic Res.*, 367 S.C. at 545, 627 S.E.2d at 689-90 (holding statutory right to appeal arbitration decision under the Federal Arbitration Act was an adequate legal remedy); *Dunbar v. City of Spartanburg*, 226 S.C. 360, 365, 85 S.E.2d 281, 283 (1954) (ordinance that provides "for a review of the [challenged] action" is "an adequate legal remedy"); *see also Jack H. Kee, Jr., Petitioner*, No. 99-ALJ-07-0203-IJ, 1999 WL 317184, at *3 (ALJ Apr. 26, 1999) (denying TRO because administrative appeal process in S.C. Code Ann. § 48-39-150(D) was an adequate remedy).[17]

[17] Plaintiff also claims that the ULMO's appeal process is not a "plausible legal vehicle" because it cannot "seek complete review . . . of the entire project as a 'minor' land development." Mot. 32. But there was nothing stopping Plaintiff from arguing to the BZA that the HPCC (or its phased approach, which was fully disclosed to the County) was a "major" development in August 2025, and there is nothing stopping Plaintiff from also making that argument as to any Phase II Land Development Permit that is issued.

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

At bottom, Plaintiff has failed to show that the remedies that the legislature and local lawmakers provided are inadequate. Thus, this Court should deny Plaintiff's Motion for Preliminary Injunction.

IV. PLAINTIFF MUST POST A SUBSTANTIAL BOND BEFORE ANY INJUNCTION ISSUES.

As explained above, Plaintiff has come nowhere close to carrying its burden of proving it is entitled to injunctive relief. However, if the Court were to disagree and conclude an injunction is warranted, it should require Plaintiff to post a bond of not less than $200 million before any such injunction becomes effective.

In South Carolina, "no injunction shall issue" until Plaintiff posts a security bond. SCRCP 65(c). Rule 65's plain text could not be clearer: the security bond is both ***mandatory*** and a condition precedent to an injunction taking effect. *Id.* Nor can a court sidestep Rule 65's mandate by requiring only a nominal bond. *Atwood Agency v. Black*, 374 S.C. 68, 73, 646 S.E.2d 882, 884 (2007). Because the purpose of the security bond is to "cover the payment of costs and damages suffered by [the] party found to have been wrongfully enjoined," *Martin v. Paradise Cove Marina, Inc.*, 348 S.C. 379, 382, 559 S.E.2d 348, 350 (Ct. App. 2001), in calculating the appropriate bond, a court must consider evidence of damages that "are the direct, natural, and proximate result of the injunction," *Hyler v. Wheeler*, 240 S.C. 386, 392, 126 S.E.2d 173, 175 (1962). Here, Plaintiff seeks an order stopping work on a multi-billion-dollar project that has been under construction for nearly a year. Johnson Aff. ¶¶ 12, 39. It should come as no surprise, then, that Valara will incur substantial damages from an injunction requiring it to stop construction on the Project.

If the Court issued an injunction, Valara could not simply terminate all 1,500 contractors at the site and send them home, *see id.* ¶ 42—stopping construction on the HPCC at this point, even temporarily, would require significant effort and expense just to demobilize. Demobilization

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

of the Project will take, at minimum, two months—including time to safely stop work, ensure the site is in a safe and secure position, and break down and store or return equipment (including, by way of example, the Project's 800-ton crane).[18] Every day until an injunction is no longer in place or the Project is fully demobilized, Valara would incur labor costs of approximately $2.4 million a day and daily equipment rental costs of approximately $350,000—for a total of approximately $2.75 million per day, not counting substantial additional administrative and operational expenses required to manage the Project during the demobilization process. Johnson Aff. ¶ 43. Over the course of a two-month demobilization period, those daily costs would add up to approximately $165 million in damages to Valara. *Id.*

Even when construction on the Project is successfully demobilized, Valara will continue to incur significant damages, including the costs of (i) storing and maintaining the equipment that could not be returned; (ii) securing the site from potential theft, damage or vandalism, which will require both paying security personnel to man the site during a shutdown, and constructing a secure perimeter around the site; and (iii) maintaining the sensitive equipment that remains at the site. The total costs while the Project is demobilized would equate to approximately $35,000 per day. *Id.* ¶ 44. Assuming the injunction lasts 90 days beyond the demobilization period, this would equate to $3.15 million in damages to Valara. *Id.*

And once construction resumes, *remobilizing* the Project would take approximately nine months and involve equally substantial costs, including (i) re-preparing the site for construction activities; (ii) recruiting and ramping up a new labor force, including locating, paying and training

[18] Any "injunction should not be overbroad or provide relief more sweeping than is necessary." 27 S.C. Jur. *Injunctions* § 12. While the Court should not issue an injunction in this case, at a very minimum, any such order should not restrain activities authorized by permits Plaintiff does not challenge, including the Land Disturbance Permits, or activities necessary to allow Valara to secure and stabilize the Property.

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

new skilled workers (given the demand for skilled workers, most of the Project's workers will have "moved on" and found new employment somewhere else—likely outside of Spartanburg County); and (iii) renting and transporting equipment and materials back to the site, equating to approximately $40 million to $60 million. *Id.* ¶ 45.

In sum, Valara will incur between $208 million to $228 million in direct damages if it is wrongfully enjoined.[19] *Id.* ¶ 46. Further, and regardless of the length of any injunction, Valara will also incur substantial costs that have not yet been quantified:

- If previously commissioned equipment is shut down, Valara will bear the costs of re-commissioning and engaging start up services to get the equipment back up and running, *id.*¶ 47.c;
- Valara would also be subject to equipment restocking fees and could lose millions of dollars in negotiated discounts upon terminating certain equipment contracts, *id.* ¶ 48.f;
- Valara would incur costs related to the expiration of warranties on extremely expensive equipment, even while that equipment remains idle, *id.* ¶ 47.d;
- Contract cancellation penalties would increase, making it more costly in the event Valara needed to cancel a contract (whether such cancellation was due to the delay itself, or merely for ordinary construction or project management reasons), *id.* ¶ 47.e; and
- If Valara canceled equipment orders, either to avoid delay penalties or increased cancelation costs, it would be subject to increased lead times when reordering equipment that it previously canceled, *id.* ¶ 47.e;

Ultimately, an injunction that stops work even for a few months will delay the Project by a multiple of that period, if not years, with immense direct and indirect damages to Valara, NorthMark Compute and Cloud LLC, and their related parties. Johnson Aff. ¶ 48. Accordingly, if this Court finds that an injunction is warranted in this case, it should set a bond of at least $200

[19] These costs may increase with the passage of time. For the avoidance of doubt, Plaintiff reserves the right to submit revised estimates, and seek an increase in any posted bond, to reflect such increased costs.

million; establish a firm deadline for Plaintiff (and its members) to post such bond; and order that any injunction shall not take effect until the bond is posted—all as required by the plain language of Rule 65. SCRCP 65(c).

CONCLUSION

Valara respectfully requests that the Court deny Plaintiff's Motion in its entirety.

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

DATED: September 14, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I filed the foregoing Opposition to Plaintiff's Motion for Preliminary Injunction through the electronic filing system on September 14, 2026, to all counsel of record for Case No. 2026CP4203416.

/s/ Mitchell Willoughby, Esq.
Mitchell Willoughby, Esq.

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

STATE OF SOUTH CAROLINA COUNTY OF SPARTANBURG Concerned Citizens of Spartanburg County, Plaintiff, v. Valara Holdings LLC, Spartanburg County, and Spartanburg County Administrator, Defendants.	)	IN THE COURT OF COMMON PLEAS SEVENTH JUDICIAL CIRCUIT C/A No. 2026-CP-42-03416 **AFFIDAVIT OF MARK JOHNSON IN OPPOSITION TO PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION**

BEFORE ME PERSONALLY APPEARED MARK JOHNSON, who, after being first duly sworn, deposes and states as follows:

1. My name is Mark Johnson. I am over the age of 18, and I am competent to attest to the information in this affidavit based on my personal knowledge regarding the matters addressed herein. I affirm that all statements included in this affidavit are truthful and accurate. I submit this affidavit in support of Defendants' Opposition to the Motion for Preliminary Injunction filed by Plaintiff Concerned Citizens of Spartanburg County.

I. Introduction

2. I currently serve as the Chief Operating Officer at NorthMark Compute and Cloud LLC. I have held this position since 2025. I am also the Executive Vice President, Operations of Valara Holdings LLC ("Valara"), which is a related entity of NorthMark Compute and Cloud LLC and NorthMark Strategies LLC (collectively, "NorthMark"). I have held various operations roles in our organization since 2017 and prior to that I was a strategy and operations consultant at Ernst & Young. I hold a B.S. in Supply Chain and Information Systems from The Pennsylvania State University.

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

3. Valara is developing a High-Performance Computing Center (the "HPCC" or the "Project") at a 294-acre brownfield site at 4000 South Pine Street in Spartanburg County, South Carolina (the "Property").

4. Since approximately March 2025, I have served as one of the project leaders for the HPCC. In that role, I oversee the design, procurement, and construction of the facility and the hiring of its operations team. I also oversee the work of Jacobs Project Management Co. ("Jacobs"), which Valara retained in May 2025 to serve as the General Contractor for the HPCC project.

II. Background on the HPCC's Development

5. Once constructed, the HPCC will operate as a privately owned industrial computing facility that supports advanced computational workloads like machine learning, scientific research, simulations, and large-scale data analysis for Valara, NorthMark, and their related entities.

6. The HPCC is being developed through a phased construction process. This phased approach was instituted when planning for the HPCC first began, for engineering, procurement, construction, and commissioning reasons, and was unrelated to the County's permitting procedures. The phased construction plan existed before Valara submitted its first land-development application. HPCCs are typically broken down into sub-components, referred to as data halls. A phased approach was intended to enable the design, construction, commissioning, and operation of the first data hall (referred to as Phase I) while Valara and Jacobs continued to develop engineering plans for subsequent data halls (referred to as Phase II).

7. Phase I involves the remediation and repurposing of the former warehouse building (referred to as Building One) that was part of the Kohler porcelain manufacturing site, as well as the installation of 24 2MW Cummins Natural-Gas Fired Generators and accompanying cooling systems. Building One encompasses Data Halls One and Two. Phase II involves the construction

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

of Building Two, the installation of five 17MW Baker Hughes Turbines and six 54MW GE Turbines, associated cooling systems, and associated maintenance and operations buildings. The HPCC is not expected to reach full-scale operation until at least 2028. Timelines are estimated and subject to typical procurement, construction, commissioning, and operational delays.

8. Before development of the HPCC began, Valara conducted a wide range of environmental impact analyses to determine the potential impacts associated with the HPCC, including soil, groundwater, wetlands, biology, cultural resources, geotechnical conditions, air, and noise, and only proceeded with the permitting and construction process after determining that any related environmental impacts were minimal and well within applicable regulations.

9. To date, activity at the site has included remediation of legacy environmental concerns (*e.g.,* landfills) that pre-date Valara's demolition and redevelopment of portions of the former Kohler facility, completion of tree-clearing and excavation, grading, installation of generators and cooling equipment, interior construction in Building One, and installation of select process equipment in the building.

10. The Property sits in a relatively industrial area of Spartanburg County, with a number of manufacturing plants, chemical facilities, and oil and gas companies located within a three-mile radius. Ex. 1. The former Kohler site itself was operated as a porcelain manufacturing plant by Kohler for approximately six decades, and as an Army training site (among other things) before that.

11. Given the nature of the prior operations at the site, there were a significant number of hazardous conditions that have been remediated by Valara, primarily through the work of DH Griffin and other third-party specialists. For example, Valara has removed asbestos and lead-based paint, remediated a prior on-site landfill, and removed several tons of unexploded ordnance and

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

related materials from the Property, at a cost to date of millions of dollars. Although the bulk of these activities has been completed, Valara anticipates additional remediation issues during the remainder of demolition and construction. If this Court were to halt construction, however, these remediation activities necessarily would also stop and remain incomplete.

III. The HPCC Will Benefit the Citizens of Spartanburg County

12. Initial grading of the HPCC began more than a year ago and construction is progressing at pace towards completion, with more than 1,500 skilled craftsmen currently employed on the Project, with teams working 7 days per week. Through Jacobs (as General Contractor and Project Manager), Valara pays these workers approximately $2.4 million per day in the aggregate.

13. When the HPCC is complete, it will provide additional, substantial benefits to the County, including more than 150 full-time jobs on-site,[1] approximately tens of millions of dollars per year in contributions through a Fee-in-Lieu-of-Taxes ("FILOT") arrangement with the County, and tens of millions of dollars injected into state and regional businesses and suppliers whose services will be required for regular maintenance and operations support.

14. In light of these benefits, South Carolina and Spartanburg County officials have publicly expressed support for the HPCC project and the investment it represents in the State and the Spartanburg community. A true and correct copy of a press release by the office of South Carolina Governor Henry McMaster, containing statements by Governor McMaster, South Carolina Secretary of Commerce Henry M. Lightsey III, and Former County Councilman David Britt, is attached as Exhibit 2.

[1] While the FILOT program required a minimum of only 27 jobs, Valara expects the HPCC to require 150 full-time employees once operational.

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

IV. Valara's Transparency and Engagement with the Community

15. Since the Project was first announced, Valara has extensively engaged with the Spartanburg community, provided information requested by residents and regulators, and has publicly provided substantial information regarding the HPCC.

16. In early 2025, at three separate meetings of the County Council, it was announced that Valara would make a $2.8 billion investment to construct a high-performance computing facility in Spartanburg County. Exs. 3, 4, 5. Local press reported on these meetings, providing the same information discussed at the County Council meetings to the public at large. Exs. 6, 7.

17. On April 22, 2025, months before Valara's first land development permit was approved, NorthMark issued a press release announcing its investment in Spartanburg to build a $2.8 billion high-performance computing facility. The press release explicitly discussed the Project's "first three phases" and previewed "later phases", explained NorthMark's "intensive environmental remediation" at the site intended to "enhance the overall health of the building and surrounding land," and highlighted that the HPCC would "self-generate" its power and not "strain[] the community's power supply." Ex. 8. Various news outlets also reported on the press release. Exs. 9, 10.

18. In September 2025, public comments were submitted to South Carolina Department of Environmental Services in response to Valara's Synthetic Minor Air Construction Permit; responses were publicly posted to DES's website. Ex. 11.

19. Since then, Valara has held two tele-townhalls in Spartanburg, at which residents could and did ask questions and raise concerns. These tele-townhalls were recorded and are available online for the general public. Additional town halls are planned for the near future.

20. Valara made company and project representatives available at the South Carolina Department of Environmental Services Public Hearing that occurred on June 25, 2026. These

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

representatives engaged directly with the public and answered questions and took feedback. Ex. 12.

21. Valara has taken and responded to questions in writing from community leaders in the region in which the project is located. With Valara's encouragement, those questions have subsequently been made public.

22. Valara has also held small-group meetings at nearby residents' homes to discuss the HPCC and answer questions, and has provided information to Spartanburg residents and local officials through written correspondence.

23. For example, Valara's representatives have communicated on numerous occasions with Dr. Alva Pack—one of Plaintiff's members, who submitted an affidavit in support of Plaintiff's preliminary injunction motion—regarding Dr. Pack's concerns surrounding the HPCC project. When Dr. Pack raised concerns about construction dust, Valara cleaned the exterior of Dr. Pack's home free of charge; and when Dr. Pack raised concerns about lighting at the facility, Valara sent a representative to sit with Dr. Pack on his front porch and observe the brightness level, and then adjusted the facility lighting to reduce its impact on Dr. Pack's home. Valara has had similar interactions with other community members, not just individuals who have raised questions or concerns.

24. Valara also sent representatives to a special hearing held by the County Council Public Safety Committee on September 9, 2026. At the Public Safety Committee meeting, Valara prepared remarks on the HPCC and answered questions from the Public Safety Committee to provide additional information on the status of the Project and the mitigation measures being implemented to reduce community concerns about air quality, noise pollution, and power generation.

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

25. I personally attended the Public Safety Committee's special hearing. During the hearing, Dr. Pack provided two minutes of public comment and answered questions from the Public Safety Committee. In response to questions by one of the members of the Public Safety Committee, Dr. Pack acknowledged that there is no "noise problem" with construction at the site, and that he is merely worried about *potential* noise from the HPCC in the *future*, once it is operational.

V. Valara's Mitigation of Impacts on the Community

26. On May 6, 2026, NorthMark issued a press release directed to its "Spartanburg neighbors," acknowledging the public's "concerns about traffic, noise, lighting, and quality of life" and assuring the community that Valara is "implementing mitigation measures including noise barriers . . . controlling lighting . . . traffic management plans . . . and regular community updates." Ex. 13. These mitigation measures are intended to, and will, address impacts from the Project both during construction and once the HPCC commences operation.

A. Valara's Mitigation of Construction Impacts

27. As described in the press release, Valara has taken—and continues to take—extensive steps to mitigate the impacts of construction of the HPCC on the Spartanburg community.

28. To address construction dust, Valara has instituted truck washes, erected perimeter fencing (with additional fencing going up as work progresses), contracted street sweepers to clean nearby roads, and has kept dirt and demolition debris wet to minimize dust. Valara is also in the process of rolling out a "good-neighbor" program through which it will offer to power-wash nearby residents' homes for free and provide free car wash subscriptions.

29. To address construction noise, Valara's temporary generators are enclosed and Valara has installed sound-deadening walls around them. It plans to do the same for all permanent

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

generators and turbines to ensure that the HPCC complies with the County's noise ordinance. Valara is also discussing options with a third-party company to design and build a custom, permanent sound barrier around portions of the site. In the interim, Valara has begun building dirt berms and planting trees at the property line to reduce noise.

30. To address the potential for increased traffic congestion, Valara has implemented a traffic management plan. Valara has also provided additional traffic-control personnel during periods of heavy construction traffic at its own expense.

31. To address light emanating from the construction site, Valara has carefully repositioned lighting sources and made other adjustments to reduce glare and reflection over the property line, and it intends to build additional dirt berms and plant additional trees to block light as well.

B. Valara's Mitigation of Operating Impacts

32. Valara also has taken significant measures to mitigate the impact on the surrounding community once the HPCC commences operation.

33. As noted above, a noise barrier has already been installed for currently permitted equipment, and additional mitigation mechanisms are being developed, including sourcing lower-noise equipment, installation of berms, sound barriers, and acoustically rated buildings or enclosures for multiple sources and exhaust flow path silencers.

34. As permanent lighting is installed, placement is evaluated to ensure illumination is directed away from adjacent properties and that fixtures are mounted so the cone of light does not cross property lines. Additional mitigation measures include directional lighting controls, shielded and downward-directed fixtures, buffering, and landscaping to screen light from neighboring residential properties, with significant landscape beautification efforts anticipated.

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

35. While I understand that Plaintiff's members have expressed concern that the facility will use a disproportionate share of the local water capacity, and will pollute local water sources and contaminate groundwater, Valara confirmed with Spartanburg Water before commencing development that significant municipal water treatment capacity and wastewater capacity are available for future residential, commercial, and industrial growth. In addition, Building Two is being designed and constructed with closed loop and air-cooled chiller technology to substantially reduce the need for cooling water during operations. As a result, the HPCC's estimated daily average water usage is not expected to materially impact the total available capacity of Spartanburg Water. To address potential groundwater pollution, the Project includes a 25-foot protective buffer around all potentially jurisdictional wetlands and streams, with stormwater managed through constructed retention basins.

36. In order to ensure that the HPCC complies with the air permits and all federal, state and local air quality standards, Valara will be implementing ongoing emission controls that include (a) a selective catalytic reduction system to control nitrogen oxides and an oxidation catalyst to control carbon monoxide and volatile organic compounds, including formaldehyde; (b) Continuous Emissions Monitoring Systems on the combustion turbines; and (c) use of natural gas fuel which minimizes sulfur dioxide and particulate matter emissions.

VI. Likely Effects of Halting and Delaying Construction on the Community

37. I understand that Plaintiff alleges its members are being actively harmed by construction dust, noise, lights, tree-clearing, visual blight, wildlife disturbance, and increased traffic congestion. However, to the extent any of these harms occurred, stopping work on the Project would not resolve them. Valara has already completed nearly all tree-clearing, excavation, grading, and demolition. I believe that dust production from building demolition is currently

peaking and is expected to decrease for the remainder of construction. Remaining work will not involve disturbing "virgin" land; and construction noise will decrease as the Project progresses.

38. Conversely, delaying construction of the HPCC would likely *prolong*, rather than remedy, the effects about which Plaintiff complains. First, any significant work shutdown would likely cause Valara and Jacobs to significantly scale down the workforce at the site. Many of these skilled craftsmen would then leave Spartanburg and obtain work at another project. Once construction were to resume, Valara and Jacobs would face great difficulty in rehiring the workforce to its current levels, lengthening the overall construction period, as described further below. A longer construction period would inevitably lengthen the time during which dirt remains exposed and any increased traffic, construction noise and lights continue. A shutdown would also affect people and businesses beyond Valara. A substantial reduction in the Project workforce would result in the loss or displacement of work for many of the skilled workers currently employed at the site and reduce work available to local and regional contractors, suppliers, and service providers. It would also delay the permanent jobs, County revenues, and other economic benefits expected once the HPCC becomes operational.

VII. Valara Will Be Irreparably Harmed If Construction is Halted

39. As noted above, development on the site commenced approximately a year ago, and to date, Valara has spent approximately $1 billion designing, developing and constructing the HPCC.

40. Much work has been performed. Consistent with and pursuant to the permits issued by the County, Valara and its contractors have constructed substantial portions of Building One and have done work on the property appurtenant thereto, including grading, foundation development, structural steel installation, roof replacement, electrical and plumbing installation, cooling and electrical equipment installation, generator installation, security fencing, and

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

landscaping. Valuable computer processing equipment for Data Hall One has been delivered and is being stored on site.

41. However, much still remains to be done as well: Building One is far from complete, with portions of open walls on all sides and significant structural, electrical, plumbing, and equipment installation to be completed; construction on Building Two has yet to begin; and substantial planned landscaping and site security and beautification activities remain to be done.

42. In short, the Project is a half-finished, active construction site, reflecting approximately a billion dollars of expenditures, and approximately three-million hours of construction labor, including more than two-million hours since March 2026 alone. If the Court issued an injunction, Valara could not simply terminate all 1,500 contractors at the site and send them home—stopping construction on the Project at this point, even temporarily, would require significant effort and expense just to demobilize, as an immediate work stoppage would leave the site in an unsafe condition. Leaving civil, structural, mechanical, and electrical work incomplete would create hazardous situations that could lead to fire and life safety incidents. In fact, I believe demobilization of the HPCC site will take, at minimum, two months—including time to safely stop work, ensure the site is in a safe and secure position, and break down and store or return equipment (including, by way of example, the 800-ton crane currently being used at the Project).

43. A work stoppage of any duration would cause immense damages to Valara. Every day until the injunction is no longer in place or the Project is fully demobilized, Valara incurs total labor costs of approximately $2.4 million a day and daily equipment rental costs of approximately $350,000—for a total of approximately $2.75 million per day, not counting substantial additional administrative and operational expenses required to manage the Project during the demobilization process. These figures are based on my review of Project budgets, contractor invoices, equipment-

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

rental obligations, workforce costs, and Project schedules in the ordinary course of my responsibilities. Over the course of a two-month demobilization period, those daily costs would add up to approximately $165 million in damages to Valara.

44. Even when construction on the project is successfully demobilized, Valara will continue to incur significant damages, including the costs of (i) storing and maintaining the equipment that could not be returned; (ii) securing the site from potential theft, damage or vandalism, which will require both paying security personnel to man the site during a shutdown, and constructing a secure perimeter around the site; and (iii) securing and maintaining the sensitive computing equipment at the site, which require full-time operations staff. I believe a reasonable, good-faith estimate of these costs to be approximately $35,000 per day. Assuming the injunction lasts 90 days beyond the demobilization period, this would equate to $3.15 million in damages to Valara.

45. Remobilizing the Project once construction resumes would be an extremely complicated and time-consuming endeavor. I estimate it would take approximately nine months to remobilize the Project: since many of the Project's workers will have "moved on" and found new employment somewhere else, Valara and Jacobs would need to locate, solicit, hire, transport and retrain a substantial portion of the 1,500 skilled craftsmen needed to complete construction; and re-renting or purchasing new or replacement equipment and materials, and transporting them to the Project, would also take substantial time. Remobilization would also be extremely costly: I believe a reasonable, good-faith estimate of the costs of (i) re-preparing the site for construction activities; (ii) ramping up the previously released labor force, including by searching for, onboarding, paying, relocating and training new skilled contractors; and (iii) purchasing, renting

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

and transporting equipment and materials back to the site, to be approximately $40 million to $60 million.

46. Together, the direct costs that have been quantified above equate to approximately $208 million to $228 million in damages to Valara from an injunction stopping work at the site.

47. Valara would also incur other harms that are extremely significant, but have not yet been quantified:

a. As noted above, given the competitiveness of retaining construction talent and the general demand for skilled workers in this field, it will be extremely difficult, if not impossible, for Valara to obtain the same level of staffing it currently has once its craftsmen are reassigned to other jobs. As a result, even when work resumes after the Project is remobilized, it is likely that it will resume with a *permanently* smaller workforce and a lower level of productivity, further delaying the Project and causing various other harms to Valara and its stakeholders.

b. The cost of labor and equipment has been steadily increasing, in many cases at a pace of up to 5% per month or higher—indeed, certain materials and equipment have increased in cost by more than 100% in the last 12 months. As a result, Valara will almost certainly have to pay more for the same services and equipment after remobilization.

c. For each piece of equipment that is shut down and moved to storage, Valara will bear the costs of re-commissioning the equipment and engaging service providers to get the equipment back up and running on-site.

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

d. Warranties on very significant pieces of equipment will continue to run down during a site shutdown and will be more likely to expire before construction is complete, which will leave Valara bearing the very substantial costs of an equipment malfunction.

e. Valara would need to cancel many pending equipment orders, either to avoid delay-related penalties, because it cannot accommodate new equipment at a non-operational site or because it would be uneconomical to incur the costs of transporting and storing the equipment. As a result, Valara would be subject to contract cancellation penalties—many of which increase over time—as well as increased lead times (up to 18 months) when reordering the equipment when construction is finally remobilized. This would delay aspects of the project by months, if not years.

f. Valara could also be subject to equipment restocking fees on canceled equipment orders under certain of its contracts, and it could lose millions of dollars in negotiated discounts upon terminating certain equipment contracts.

48. Ultimately, I believe that any injunction that stops work even temporarily will delay the Project for many months, if not years, with immense direct and indirect damages to Valara and its stakeholders, as well as to the residents, businesses and taxpayers of Spartanburg County. A shutdown would disrupt current employment and contracting activity, delay the Project's permanent jobs and County revenues, and prolong the period during which the site remains under construction.

FURTHER AFFIANT SAYETH NOT.

Mark Johnson

Sworn to and subscribed before me

this 14th day of September, 2026

Maria D'Anza

Notary Public

My Commission Expires: JUNE 14, 2030

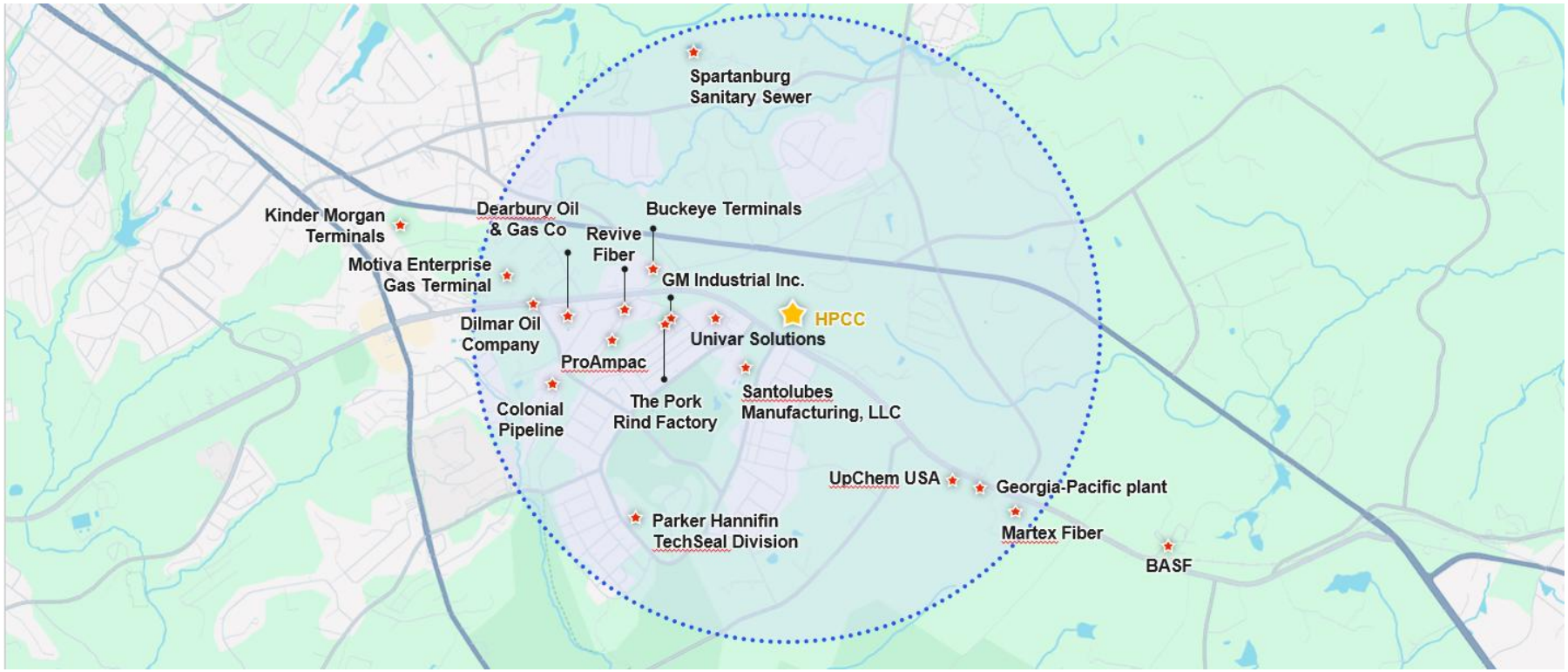
MARIA DONZA
Notary Public, State of New York
No. 01DO6223376
Qualified in Kings County
Commission Expires 06/14/2030

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JOHNSON EXHIBIT 1

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

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JOHNSON EXHIBIT 2

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NorthMark Strategies selects Spartanburg County to establish first South Carolina operation

Company investing $2.8 billion in high-performance

April 22, 2025

COLUMBIA, S.C. – NorthMark Strategies (NorthMark), a multi-strategy investment firm, today announced it selects Spartanburg County to establish the company's first South Carolina operation. The $2.8 billion investment will create at least 27 new jobs and is expected to utilize regional businesses and suppliers for

computing center

regular maintenance and operations support.

NorthMark provides strategic advice, asset management and value-added services to privately owned companies around the world. The Spartanburg facility will be the company's fifth U.S. operation.

NorthMark's new operation, located at 4000 South Pine Street in Spartanburg, will serve as a state-of-the-art, high-performance computing center designed to support a portfolio of businesses in the engineering and technology sectors. Once operational, the facility will generate its own power on-site, ensuring minimal impact on the power grid.

Initial operations are expected to be online in the third quarter of 2026 with further development phases to follow. Individuals interested in joining the NorthMark team should visit the company's careers page.

QUOTES

"Of the more than 100 locations across the country we considered, Spartanburg stood out for its strong community, skilled workforce, dynamic economy and strategic advantages. Our investment in this high-performance computing center solidifies our commitment to building for future growth and being prepared to meet the growing demand for HPC capabilities among our current and future investment partners head-on." **-NorthMark Strategies President Jen Byrne**

"NorthMark Strategies' $2.8 billion investment is a milestone moment for Spartanburg County, and a clear reflection of the confidence companies have in our state. This project further positions South Carolina as a national leader in technology and innovation. We proudly welcome NorthMark to South Carolina and look forward to the impact they'll have for years to come." **-Gov. Henry McMaster**

"With NorthMark Strategies establishing operations in Spartanburg County, South Carolina continues to add to its already impressive technology industry. We celebrate this remarkable investment in the Upstate and all it will mean for our state and our people. Congratulations to NorthMark and Spartanburg County on this announcement and the opportunities it will bring." **-Secretary of Commerce Harry M. Lightsey III**

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"We are thrilled to welcome NorthMark Strategies to Spartanburg and look forward to the opportunities this project will bring to our community. Spartanburg will greatly benefit from this highly unique and dynamic investment for years to come. What makes this project even more exciting is that it comes at zero cost to taxpayers and places little to no demand on our existing infrastructure." **-Spartanburg County Council Vice Chairman and Economic Development Committee Chairman David Britt**

FIVE FAST FACTS

- **NorthMark Strategies (NorthMark) selects Spartanburg County to establish the company's first South Carolina operation.**
- The company's **$2.8 billion investment will create at least 27 new jobs.**
- NorthMark is a **multi-strategy investment firm.**
- The company will be located at **4000 South Pine Street in Spartanburg, S.C.**
- Individuals **interested in joining the NorthMark team** should visit the company's **careers page**.

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JOHNSON EXHIBIT 3

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MINUTES
County Council Meeting

February 17, 2025

Spartanburg County Council met on Monday, February 17, 2025, in the County Council Chambers, 366 N. Church Street, Spartanburg, SC, at 5:15 p.m. The following attended: Honorable Manning Lynch, Chairman; Honorable David Britt, Vice-Chairman; Honorables Monier Abusaft, Jack Mabry, Grant DeShields, Bob Walker, and Jessica Coker, Council Members; along with Cole Alverson, County Administrator; Earl Alexander, Deputy County Administrator; Kevin Stiens, Assistant County Administrator; John Harris, County Attorney; and Ryan Gaylord, Deputy County Attorney.

In compliance with the Freedom of Information Act, notice of this meeting was provided in advance to the local news media and other interested parties.

The meeting was live streamed via YouTube. Links and instructions for accessing this meeting via computer or mobile device were made available on the County's webpage and provided to the local media.

I.

Chairman Lynch called the meeting to order.

II.

Invocation was rendered by Chaplain Derrick Scurry.

III.

Honorable Bob Walker led the Pledge of Allegiance.

IV.

A. Motion made by Mr. Britt to approve the minutes of January 27, 2025 (Regular Meeting). Motion seconded by Ms. Coker and carried.

V.

A. Motion made by Ms. Coker to reappoint Jackie "Ray" Crotts to the Board of Zoning Appeals as the District 6 Representative. Motion seconded by Mr. Britt and carried.

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

VI.

Earl Alexander, Deputy County Administrator, presented the following Animal Services Update for the Pet Resource Center: The foundation is currently being poured for the Pet Resource Center. We are on schedule with the construction and on budget. The interview process has started for our open positions. We hope to have the positions filled by the end of this month. The Animal Ordinance Amendment will be presented later in the Public Safety and Judiciary Committee. The amendments will require three readings and a public hearing. Council will be asked to render the 1st Reading tonight.

VII. **Economic Recruitment and Development Committee**
Honorable David Britt, Chairman
Honorable Manning Lynch, Member
Honorable Jack Mabry, Member

A. Motion made by Mr. Lynch to adopt the Resolution authorizing, under certain conditions, the execution and delivery by Spartanburg County, South Carolina of two Fee In Lieu of Tax Agreements with **Project Moc-1** with respect to a project in the county whereby the project would be subject to payment of certain fees in lieu of taxes, and whereby **Project Moc-1** will be provided certain credits against fee payments in reimbursement of investment in related qualified infrastructure; and providing for related matters. Motion seconded by Mr. Mabry and carried.

Council Action:
Motion made by Mr. Britt to adopt the Resolution. Motion carried.

VIII. **Personnel and Finance Committee**
Honorable Jessica Coker, Chairman
Honorable Bob Walker, Member
Honorable Jack Mabry, Member

A. Motion made by Mr. Mabry to approve the request to authorize the reclassification of positions in the **Treasurer's Office**. The request will upgrade existing position #95 from Senior Administrative Assistant (Grade 10) to Chief Administrative Assistant (Grade 12) and position #91 from Accounting Technician (Grade 8) to Senior Administrative Assistant (Grade 10). Motion seconded by Mr. Walker and carried.

Council Action:
Motion made by Ms. Coker to approve request. Motion carried.

B. Received updated financial data and personnel vacancy report.

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

IX. **Livability Committee**
Honorable Jack Mabry, Chairman
Honorable Monier Abusaft, Member
Honorable Grant DeShields, Member

A. Kevin D. Stiens, Assistant County Administrator, presented information regarding a request from the **Spartanburg Regional Healthcare System to allocate funding from the Trails Bank in the amount of $142,000 for improvements to the Upper Chinquapin Greenway.** A map was provided to detail the location of the new access roads. Motion made by Mr. Abusaft to approve the request. Motion seconded by Mr. DeShields and carried.

Council Action:
Motion made by Mr. Mabry to approve request. Motion carried.

B. Information received regarding activities of the Parks Department.

X. **Public Safety and Judiciary Committee**
Honorable Monier Abusaft, Chairman
Honorable David Britt, Member
Honorable Jessica Coker, Member

A. Earl Alexander presented the following information regarding an **Ordinance to amend Chapter 6 of the Spartanburg County Code of Ordinances entitled "Animals"** to provide for enhanced animal welfare, increase public safety, protect community health, provide legal clarity, and increase responsibility and accountability for owners of animals. One of the key elements of being a good neighbor is respecting boundaries. Keep your pets within your property and prevent them from roaming freely into your neighbor's yards or becoming public nuisances. Control noise and manage and train your pets to minimize excessive barking or disruptive noises. Clean up after and around your pet in public and shared spaces. Make sure you have proper care for your pets to make sure they are healthy and vaccinated and well-groomed to prevent health hazards throughout the community. Communicate with your neighbors.
Global Updates: We removed the fees from the Ordinance and placed them in our County Fee Schedule, which is updated annually and easily monitored. Violations of any provision of the Animal Ordinance are a misdemeanor and subject to a fine not exceeding $500 plus court costs or imprisonment for a term not exceeding 30 days or both, unless specified otherwise in a section of the ordinance. Pet Resource Center replaces animal shelter throughout the ordinance. The definitions have been expanded to provide more clarity on key terms related to animal care and control.
PRC Operations *(Stray Pets)* Free drop-off at designated appointment times. Must make efforts to locate owners before PRC admission. Property owners can deliver strays to the PRC if fostering or finding the owner isn't possible, except

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

for healthy community cats. Animal control can seize threatening, suffering, or endangered strays. ***(Rabies Control)*** Current Rabies License Required. Not having a current rabies license for a dog or cat may result in a misdemeanor: 1st Offense - a fine up to $250. Second & Subsequent Offenses – a fine up to $500, plus court costs.

Treatment/Cruelty of Animals (Animals in Vehicles – Heat Stress): It is illegal to cause an animal to suffer heat stress in an enclosed vehicle, punishable by a fine up to $500, plus court costs and/or up to 30 days in jail. Officers can remove the animal and provide immediate veterinary care; owners are responsible for all incurred expenses.

Public Nuisance Acts Owners must exercise proper care to prevent their dogs from becoming public nuisances. Acts deemed nuisances include chasing vehicles. Trespassing and damaging property. Attacking companion animals, livestock, or poultry, causing injury or death (unless the attacked animal is trespassing). Habitually running at large. Three or more convictions for running at large within two years. Attacking a human being, causing injury or death, with certain exceptions. (***Confinement and Penalties***) Dogs must be confined until the court makes a final decision. If confinement is deemed necessary, the owner is responsible for impound fees unless found not guilty. Violating subsections (a)(1) or (a)(2): Misdemeanor punishable by a fine up to $500 plus court costs. Violating subsections (a)(3), (a)(4), (a)(5), or (a)(6): Misdemeanor punishable by a fine up to $500, court costs, or imprisonment up to 30 days, or both. ***(Exceptions)*** This section does not apply to: Law enforcement or search and rescue activities. Supervised obedience training classes or shows. Formally sanctioned field trials. Lawful hunting with dogs during open season. Bona fide hunting or field trial dog training.

Defenses for Attacks on Humans Owners are not guilty if the attack occurs under specific circumstances: The person attacked was committing a crime on the premises occupied by the dog's owner or custodian. The person was committing willful trespass. The person was provoking, tormenting, or abusing the dog. The attacking dog was a police dog on duty. The dog was responding to pain or injury not caused by the person. The dog was protecting itself, its kennel, its offspring, its owner, or property.

Allowing Animals to Urinate or Defecate: It is a misdemeanor for the owner of any animal to knowingly or willingly allow the animal to urinate or defecate on public property or someone else's property without consent. Punishable by a fine up to $250 ***(Exceptions)***: Urination or defecation within the curb or gutter area of a public street or roadway is allowed. Defecation on public property is not unlawful if the owner removes and disposes of the excrement immediately in a public trash receptacle, sanitary sewer, or on their own property in a lawful manner.

Public Nuisance Noise from Animals Noise Restrictions: It is a misdemeanor to allow an animal to bark or make noise that is plainly audible within a residential dwelling for more than one cumulative hour within any 24-hour period. This does not apply to parcels of land of five acres or more (or one or more contiguous parcels with the same ownership that total five acres or

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

more). A person is considered to have "allowed" their animal to create noise after two complaints from different households, one of which can be an official like a deputy or animal control officer. If there are fewer than two households within 750 feet of the noise source, one complaint suffices. ***(Penalties):*** Violations are misdemeanors punishable by fines up to $500 plus court costs. Each instance is a separate offense. Third or subsequent violations are punishable as per Section 6-4.

Number of Dogs Allowed It is a misdemeanor for any person or entity to own, keep, or harbor more than twenty dogs (four months of age or older), regardless of parcel size or the number of parcels. Violations are punishable by fines up to $250. ***(Exceptions)*** Does not apply to recognized pet rescue organizations if all dogs have current Bordetella vaccination. Proof of vaccination must be provided to an Animal Control Officer upon request.

Keeping Dangerous or Vicious Animals *(Confinement Requirements)* Owners/caretakers must not allow dangerous/vicious animals to go unconfined on their premises. "Unconfined" means not securely indoors or in a locked pen/cage with high sides or embedded at least one foot into the ground. Excludes dogs owned by licensed security companies on patrol in confined areas. Dangerous or vicious animals may be impounded. Redemption requires authorization from the director of environmental enforcement or the designee. Dangerous animals must not leave the premises unless safely restrained. Compliance with Section 6-54(e) is required when beyond premises. It is prohibited to own, harbor, train, torment, badger, bait, or use an animal to encourage unprovoked attacks on humans or domestic animals. It is illegal to possess with intent to sell, offer for sale, breed, or buy known dangerous animals. Exceptions for individuals licensed under USDA regulations as per the Animal Welfare Act. ***(Civil Remedies and Authority to Use Force Civil Remedies)*** This chapter does not negate any civil remedies available under statutory or common law. ***(When Person is Lawfully on Premises)*** A person is lawfully on an owner's premises if performing duties imposed by state laws or postal regulations, by the owner's invitation, or performing public safety duties. A person lawfully on the premises attacked by a dangerous animal can use reasonable force to repel the attack. No liability for actions taken to repel, restrain, or control an unprovoked attack by a dangerous animal.

PRC Operations Impoundment and Release Owners can reclaim pets by meeting county requirements and paying fees, which may be reduced if they choose sterilization, vaccination, and microchipping.

Owner Surrendered Animals Pet Resource Center staff assist owners in exploring alternatives before surrendering pets. A fee may apply for pet surrenders, per the County fee schedule.

Dog Breeders License Requirement Persons breeding dogs as an individual, business, occupation, or profession must obtain a county dog breeder license from Animal Control. It is unlawful for dog breeders to operate without this license. Persons breeding as an individual, business, occupation, or profession is defined as having at least one unaltered female dog and producing at least one litter of puppies to sell within twelve months. Proof is required that all dogs

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

aged four months and older have received a rabies vaccination. Animal Control Officers conduct annual inspections before issuing the license. Officers check for adequate care, exercise, feed, shelter, space, water, and maintenance of premises. The premises must also be secure against public and stray animal access. License will not be issued to applicants with a history of animal cruelty violations. License application must be submitted before any litter is delivered to avoid penalties. License expires one year after issuance and is non-transferable. Inspection and reinspection fees are established in the County fee schedule. Violations can lead to license suspension. Suspended licenses remain inactive, and breeding must cease until a new license is issued.

Selling Pets Prohibition on Selling Pets: It is Illegal to sell, trade, auction, lease, rent, or display dogs or cats for commercial purposes in specific locations. Includes roadsides, public rights-of-way, public property, commercial/ institutional parking lots, sidewalks, fairs, or carnivals. Violations are misdemeanors, punishable by a fine up to $500.

Motion made by Ms. Coker to render 1st reading of the Animal Ordinance Amendment as presented to Council. Motion seconded by Mr. Britt and carried.

Council Action:

Motion made by Mr. Abusaft to approve request. Motion carried.

B. Rusty Clevenger, County Coroner, provided information on his request to apply for the 2025 Paul Coverdell Forensic Science Improvements Grant in the amount of $450,000. Motion made by Mr. Britt to approve the request. Motion seconded by Ms. Coker and carried.

Council Action:

Motion made by Mr. Abusaft to approve request. Motion carried.

C. Mr Abusalt made the following remarks regarding comments made at his District One Town Hall meeting on February 6, 2025, in reference to questionable transactions made by the Sheriff with his company credit card. Mr. Abusaft began by saying that he believes there is much responsibility to be passed around, starting with County Council. Council should be meticulous over things they have power over, such as the Sheriff's Office budget and salaries. Although the Sheriff was not on the County's PCard system, the staff should have done better by Council and the taxpayers. Mr. Abusaft said he does not expect the Sheriff's Office to be treated differently than any other County employee. Justification is required whenever expenditures are made with taxpayer funds. Mr. Abusaft said that no one on Council has ill will against the Sheriff. He admitted to having a great working relationship with the Sheriff and does not want these comments to be interpreted as an attack against him. However, Mr. Abusaft feels the Council must separate themselves from the review of the Sheriff and refer it to an individual or organization to make a fair and clear determination on what happened. He said that it is unfair to us and the Sheriff for accusations to continue going around. Mr. Abusaft closed by saying there

needs to be an investigation to determine what happened and what did not happen, which is equally important.

D. Received information regarding activities of Building Codes and Environmental Enforcement Departments.

XI. Land Use Committee

Honorable Grant DeShields, Chairman
Honorable Bob Walker, Member
Honorable Manning Lynch, Member

A. Received Planning Department Reports on Development Activity.

XII. Public Works, Buildings and Grounds Committee

Honorable Manning Lynch, Chairman
Honorable David Britt, Member
Honorable Jessica Coker, Member

A. The following **Capital Penny Update** was presented by Cole Alverson, County Administrator.
1.) The utility relocation for the Joint Complex with the City has begun along Harris Place and Kennedy Streets near the old City Hall site. **2.)** The RFP for the demolition of 160 S. Church Street is out. The pre-bid meeting for demolition contractors was held this morning. The bids are due by March 4th. The plan is to award the contract within a week or so after that and move fairly quickly to get them mobilized to the site. **3.)** The cell tower is located onsite. It should be removed within the next 30-60 days. **4.)** Design work continues to progress. We are still in design development and working with the team collectively on doing some value engineering on the early estimates while looking for opportunities for savings that will not materially detract from the quality of the building or what we want to accomplish with the building itself. **5.)** Our private partner developer is working on advancing their design along with their architectural group so coordination can begin on things like structural loads, etc. **6.)** The second half of our tier-1 DOT roads are scheduled to be let in March from Highway 290 to East Blackstock Road. It will also include East and West Main Streets inside the City of Spartanburg and adjacent thereto, as well as N. St. John Street. Highway 29 (East Main Street) into or around the Denny's Tower will be included. **7.)** The County's subdivision paving paid with Capital Penny Tier-1 will go out for bid on April 1st. The municipal paving package goes out on May 6th. Our through roads are separated from the neighborhood level due to the different skillsets. The packages are split up 3-ways. They go out on July 1st, August 5th, and September 2nd. Regarding Zion Hill, our intersection improvement will be on the street on April 24th. Large stormwater culverts will be out in June and August.

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B. Updated information was received regarding the activities of the Public Works Department.

XIII.

Mr. James Herzog welcomed Mr. Deshields to Council. He reported that Mr. Alverson had answered his questions earlier today.

XIV.

No Old Business

XV.

A. The following Budget Amendment Resolutions were provided to County Council:

Budget Amendment Number 5 recognizes revenue received from insurance companies for totaled Sheriff's Office vehicles. Reimbursements were received during FY25 for vehicles 2268, 3242, and 3249 to be used to purchase replacement vehicles.

Budget Amendment Number 168 allocates funds within the Bicycle and Pedestrian Infrastructure project (CP50000121) and establishes funding for Spartanburg Regional Healthcare System to make improvements to the Upper Chinquapin Greenway as part of Spartanburg Regional Healthcare System's project to improve the entrance and access to the Hospice Home.

Budget Amendment Number 174 provides additional funding for the UPS project (CP20200524) in Communications. Funding will be provided by carryover funding available in the General Fund nondepartmental special projects account ($70k) as well as the recognition of unbudgeted revenues from the state retirement credit ($50k). An additional $11.4k will be transferred from Communications operating expenditures to cover electrical engineering design services.

Budget Amendment Number 179 provides additional funding for several server replacements at Communications/911. Funding will be provided by the recognition of unbudgeted revenues from the state retirement credit.

Budget Amendment Number 183 provides additional funding for the Aerial Photography project (CP40300225). Bids came in higher than previously budgeted during the FY25 budget process. Funding will be provided from available prior-year reserves in the Information Technology Fund.

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Budget Amendment Number 220 authorizes the transfer of $28,750 from Fleet Salaries, to CP41201125 Fleet Office and Tire Shop Renovation. The expanded scope expenses will be covered by Fleet salary slippage as excess funds are anticipated for FY25.

Budget Amendment Number 289 sets up the FY2025 HMEP grant award. Funds will be used for the HazMat conference and two training classes.

Budget Amendment Number 398 recognizes revenue received in January into the State Drug Fund.

Budget Amendment Number 399 recognizes and reconciles FY25 interest earned on proceeds from Capital Penny Sales Tax revenue through January 2025 and allocate interest to the Judicial Center projects (CP00000119).

Budget Amendment Number 497 reimburses IT Project Capital (CP40200325) for two departments' iPad hardware costs, which exceeded allotted amounts. The overages will be transferred from the departments' Technology budgets: $5,136 from Building Codes Technology and $2,247 from Environmental Enforcement Technology

Budget Amendment Number 615 reimburses IT Project Capital (CP40200325) for two departments' iPad hardware costs, which exceeded allotted amounts. The overages will be transferred from the departments' Technology budgets: $5,136 from Building Codes Technology and $2,247 from Environmental Enforcement Technology

Budget Amendment Number 1294 is regarding the Library Headquarter Construction project (CP50700119) funded with proceeds from the 2019 GO Bond issue was originally set up in 2019 to include the portion of the costs that were going to be funded with other Library funding (i.e., private donations, Library board approved funding, etc.) These costs will be paid directly by the Library, so this budget amendment removes those revenue and expenditure line items from the project.

Budget Amendment Number 25022 continues the County's support of Spartanburg Community College's Heavy Equipment Operators courses by forgoing resale value and, instead, donating the following deadline Roads & Bridges and Solid Waste equipment to Spartanburg Community College:

Budget Amendment Number 25024 amends authorized staffing within the Treasurer department. This budget amendment will rename and reclassify two positions: Position 95 from Senior Administrative Assistant (gr 10) to Chief Administrative Assistant (gr 12), and Position 91 from Account Technician (gr 8) to Senior Administrative Assistant (gr 10). The combined budgetary impact is estimated as $2,246 for the remainder of FY25, and as $7,300 for FY26, and would be covered by slippage. These increases will provide compensation for increased responsibilities in these roles.

Motion made by Ms. Coker to approve the Budget Amendment Resolutions provided to Council. Motion seconded by Mr. Abusaft and carried.

XVI.

Meeting adjourned.

SPARTANBURG COUNTY COUNCIL

By: _____
A. Manning Lynch, Chairman

Attest:

_____
Angela G. Walker
Clerk to Council

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JOHNSON EXHIBIT 4

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MINUTES
County Council Meeting

Executive Session

Monday, March 17, 2025
3:45 P.M.

Spartanburg County Council met on Monday, March 17, 2025, at 3:45 p.m. in Conference Room Two of the County Administrative Office Building. The following were in attendance: Honorable Manning Lynch, Chairman; Honorable David Britt, Vice-Chairman; the Honorables Monier Abusaft, Jack Mabry, Grant DeShields, Bob Walker, and Jessica Coker, Council Members; along with Cole Alverson, County Administrator; Earl Alexander, Deputy County Administrator; Kevin Stiens, Assistant County Administrator; John Harris, County Attorney; and Ryan Gaylord, Deputy County Attorney. In compliance with the Freedom of Information Act, notice of this meeting was provided in advance to the local news media and other interested parties.

I. Chairman Lynch called the meeting to order.

II. Motion made by Mr. Mabry to go into Executive Session to discuss the following items. Motion seconded by Mr. Britt and carried.

A. Discussion of negotiations incident to proposed contractual arrangements related to the future Joint Government Complex.

B. Receipt of legal advice subject to attorney-client privilege regarding an insurance claim.

C. Discussion of personnel matter (s) pursuant to South Carolina Code of Laws § 30-4-70(a)(1).

D. Receipt of legal advice subject to attorney-client privilege regarding potential litigation relative to an inmate.

No action was required following the Executive Session

III. Meeting adjourned.

Spartanburg County Council

By: _____
A. Manning Lynch, Chairman

Attest:

_____
Angela G. Walker
Clerk to Council

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MINUTES
County Council Meeting

March 17, 2025

Spartanburg County Council met on Monday, March 17, 2025, in the County Council Chambers, 366 N. Church Street, Spartanburg, SC, at 5:15 p.m. The following attended: Honorable Manning Lynch, Chairman; Honorable David Britt, Vice-Chairman; Honorables Monier Abusaft, Jack Mabry, Grant DeShields, Bob Walker, and Jessica Coker, Council Members; along with Cole Alverson, County Administrator; Earl Alexander, Deputy County Administrator; Kevin Stiens, Assistant County Administrator; John Harris, County Attorney; and Ryan Gaylord, Deputy County Attorney.

In compliance with the Freedom of Information Act, notice of this meeting was provided in advance to the local news media and other interested parties.

The meeting was live streamed via YouTube. Links and instructions for accessing this meeting via computer or mobile device were made available on the County's webpage and provided to the local media.

I.

Chairman Lynch called the meeting to order.

II.

Invocation was rendered by Chaplain Amos Durham.

III.

Anna Vidrine of the Spartanburg 4-H Teen Council led the Pledge of Allegiance. Laura Jane Haddon provided updates on what the Spartanburg County 4-H is doing. She reported that there are over four thousand youth ages 5-18 in our county that participate in 4-H activities either at their school through enrichment programs, or the Upstate Kids Club, or as members of at least one of their twelve (12) organized community clubs. Clemson University Cooperative Extension 4-H Youth Development uses a learn by doing approach to help youth gain the knowledge and skills to be responsible productive and contributing members of our society. They do it through the following five (5) areas: STEM, Natural Recourses, Healthy Living, Agricultural and Animals, and Civic Engagement and Leadership.

Mary Quinn Settle reported that she is involved in the 4-H Teen Council and the Beef on Dairy project. She is one of five in the state that has a Beef on Dairy steer. Ms. Settle invited everyone to attend their Peach Country Livestock Show this weekend. March

21st will feature The Swine Show and on March 22nd, they will showcase Beef, Rabbit, Poultry and Dairy Goat. The event will be held at the Piedmont Interstate Fairgrounds. On March 22nd, Midway Barbeque will be onsite. Invitations were passed out to the Council members.

IV.

A. Motion made by Mr. Mabry to adopt the Resolution proclaiming March 2025 as Disabilities Awareness Month in Spartanburg County. Motion seconded by Mr. Britt and carried. Mr. Abusaft read and presented the Resolution to the Spartanburg County Disabilities and Special Needs Board.

B. Motion made by Mr. Abusaft to adopt the Resolution in Honor and Recognition of The Late Lou Ellen Rice-Sartor, Former Spartanburg Soup Kitchen Executive Director. Motion seconded by Mr. Britt and carried. Mr. Abusaft read and presented the Resolution to the Rice-Sartor Family. Special remarks about Ms. Rice-Sartor were made by Beth Rutherford, Homeless Engagement Specialist for the City of Spartanburg and Program Manager of the "A Place to Call Home Initiative".

C. Motion made by Mr. Britt to adopt the Resolution proclaiming April 2025 as Fair Housing Month in Spartanburg County. Motion seconded by Ms. Coker and carried. Mr. Lynch read and presented the Resolution to Michael Brown, Community Services Specialist.

D. Motion made by Mr. Britt to adopt the Resolution in Recognition of the Hurricane Helene Relief Efforts by Spartanburg County Emergency Management. Motion seconded by Ms. Coker and carried. Mr. Lynch read and presented the Resolution to Doug Bryson, Office of Emergency Services Director. Mr. Bryson gave remarks and special recognition of staff, the many volunteers, surrounding counties and organizations that assisted with the recovery efforts, by calling their names and having them assemble up front for applause and photos.

V.

A. Motion made by Mr. Britt to approve the minutes of February 17, 2025 (Regular Meeting). Motion seconded by Mr. Mabry and carried.

VI.

A. Mr. Lynch declared open a public hearing to consider the proposed enactment of an Ordinance authorizing the delivery by Spartanburg County, South Carolina, of a Special Source Revenue Credit Agreement between the County and **1017 Florida Ave, LLC,** a South Carolina limited liability company. No one appeared, and the matter was closed.

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B. Mr. Lynch declared open a public hearing to consider an **Ordinance to amend Chapter 6 of the Spartanburg County Code of Ordinances entitled "Animals"** to provide for enhanced animal welfare, increase public safety, protect community health, provide legal clarity, and increase responsibility and accountability for owners of animals. No one appeared, and the matter was closed.

C. Mr. Lynch declared open a public hearing to consider an Application for Special Public Event Exclusion from the Noise Ordinance requested by **Teu Thang, Community of Khmer Buddhist** from 1:00 p.m. until 11:55 p.m. on Saturday, April 5, 2025; and from 11:00 a.m. until 8:00 p.m. on Sunday, April 6, 2025, for a Cambodian New Year Celebration at 841 Shiloh Church Road, Wellford, SC 29385. No one appeared, and the matter was closed.

D. Mr. Lynch declared open a public hearing to consider an Application for Special Public Event Exclusion from the Noise Ordinance requested by **Ron Ork** from 1:00 p.m. until 11:59 p.m. on Saturday, April 12, 2025; and from 11:00 a.m. until 11:59 p.m. on Sunday, April 13, 2025, for the Cambodian New Year's Celebration at 770 Bryant Road, Spartanburg, SC 29303. No one appeared, and the matter was closed.

E. Mr. Lynch declared open a public hearing To consider an Application for Special Public Event Exclusion from the Noise Ordinance requested by **Greer Dragway** from 4:00 p.m. until 11:59 p.m. on Saturday, April 12, 2025; May 17, 2025; and May 31, 2025, for a Drag Race at 1792 Dragway Road, Greer, SC 29651. No one appeared, and the matter was closed.

VII.

No items required a vote following Executive Session.

VIII.

Motion made by Mr. Abusaft to appoint Karry L. Guillory to the Appalachian Council of Governments Board as a Minority Representative. Motion seconded by Mr. Mabry and carried. Motion made by Mr. Mabry to reappoint Charles H. White, Jr. to the Cooley Springs/Fingerville Fire Service Area. Motion seconded by Mr. Britt and carried. Motion made by Mr. Mabry to reappoint Josh McCarley to the Forrester Center for Behavioral Health. Motion seconded by Mr. Britt and carried. Motion made by Mr. Britt to appoint Glory Harrison Boozer to the Library Board of Trustees. Motion seconded by Mr. Mabry and carried. Motion made by Mr. Walker to appoint Timmy D. Moore to the Community Development Advisory Committee and the District 5 Representative. Motion seconded by Ms. Coker and carried. The Tyger River Fire District Board nomination was inadvertently omitted.

Mr. Abusaft left Chambers at 6:03 p.m. and returned at 6:06 p.m.

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

IX.

Earl Alexander, Deputy County Administrator, presented the following Animal Services Update for the Pet Resource Center: Sitework – All underground utilities and plumbing for the footprint are complete. The foundations for the entire project have been poured and concrete flooring slab (600 cubic yards) are scheduled for the last week of this month. Ninety tons of structural steel to start the erection process on April 14th. The curb layout was poured last week for the parking areas. The exterior mason walls will start going vertical the week of April 14th and the roof 4-weeks later. Roughly 25 workers are onsite daily. Staffing Updates: Three offers have been made and accepted for the PRC. The Deputy Director will start March 20th. The other two are going through the HR Hiring process. We hope to have the Volunteer Coordinator filled by the end of the month. Animal Ordinance Amendments for 2nd Reading: A few revisions have been made since the first reading. The definition for cat or domestic cat and dog or domestic dog was added. Some administrative modifications were made specific to enforcing the ordinance. Updated references to public agencies and additional information to provide clarity for staff and public. A fine was adjusted from $1,000 to $500 to comply with state statute of limitations.

X. **Economic Recruitment and Development Committee**
Honorable David Britt, Chairman
Honorable Manning Lynch, Member
Honorable Jack Mabry, Member

A. Motion made by Mr. Lynch to render first reading to an Ordinance authorizing the execution and delivery of a Fee In Lieu of Tax Agreement by and between Spartanburg County and **Project HQ 2024**. Motion seconded by Mr. Mabry and carried. **Council Action:** Motion made by Mr. Britt to adopt Resolution. Motion carried.

Mr. Abusaft left Chambers at 6:07 p.m.

B. Motion made by Mr. Lynch to render first reading to an Ordinance to authorize and approve an **Agreement for the Development of a Joint Industrial and Business Park by and between Union County and Spartanburg County.** Motion seconded by Mr. Mabry and carried. **Council Action:** Motion made by Mr. Britt to adopt Resolution. Motion carried. (Mr. Abusaft was not in Chambers to vote.)

C. Motion made by Mr. Lynch to render first reading to an Ordinance authorizing the execution and delivery of two Fee In Lieu Of Tax Agreements by and between Spartanburg County and **Project MOC-1.** Motion seconded by Mr. Mabry and carried. **Council Action:** Motion made by Mr. Britt to adopt Resolution. Motion carried. (Mr. Abusaft was not in Chambers to vote.)

Mr. Abusaft returned at 6:09 p.m.

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

Economic update from Mr. Britt: Today's agenda represents $40.6M in investments and 215 new jobs. The year-to-date total is $2.822B in investments and 242 jobs.

XI. **Public Health and Human Services Committee**
Honorable Bob Walker, Chairman
Honorable Monier Abusaft, Member
Honorable Grant DeShields, Member

A. Kathy Rivers, Community Development Director, gave a brief synopsis of the **Community Development Block Grant Program and Home Investment Partnerships Program FY2025 Annual Action Plan Funding Recommendations.** After some discussion, Mr. Abusaft asked for additional time to review the plan.

Motion made by Mr. Abusaft to postpone the request until the next meeting. Motion seconded by Mr. DeShields and carried.

XII. **Personnel and Finance Committee**
Honorable Jessica Coker, Chairman
Honorable Bob Walker, Member
Honorable Jack Mabry, Member

A. Mike Emory, Director of Administrative Services, provided information on his request to authorize the reclassification of a position in the **Fleet Services Department**. The request will upgrade position #1378 from Auto Mechanic Helper to Diesel Mechanic I (Grade 11). The financial impact of this reclassification will be $3,876 for FY25 and $12,596 for FY26. Motion to approve the request was approved by Mr. Mabry. Motion seconded by Mr. Walker and carried. **Council Action:** Motion made by Ms. Coker to approve the request. Motion carried

B. Cole Alverson, County Administrator, provided information in support of his request for an additional $5.3 million to be moved to the Hurricane Helene Disaster Recovery Fund. Mr. Alverson believes the additional resources will provide cash flow for the fund for the next month. In order to accommodate the request, He proposed to allocate and transfer proceeds from our General Fund Capital Reserve. The majority of funds used in this recovery effort will be reimbursed by FEMA or the State. Mr. Alverson asked Travis Brown to provide additional updates of the debris pickup and removal resources, contractors, and timing within the county. 57After thorough discussion, a Motion was made by Mr. Mabry to approve the request. Motion seconded by Ms. Coker and carried. Mr. Walker voted no. **Council Action:** Motion made by Ms. Coker to approve request. Motion carried with a majority vote of 6-1.

C. Received updated financial data and personnel vacancy report.

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

XIII. **Livability Committee**
Honorable Jack Mabry, Chairman
Honorable Monier Abusaft, Member
Honorable Grant DeShields, Member

A. Information received regarding activities of the Parks Department.

XIV. **Public Safety and Judiciary Committee**
Honorable Monier Abusaft, Chairman
Honorable David Britt, Member
Honorable Jessica Coker, Member

A. 1st Lt. Mikhail M. Mironenko stood on behalf of the **Sheriff's Office** to request permission to apply for the Paul Coverdell Forensic Science Improvements Grant to purchase updated laboratory equipment for the Forensics Unit. Motion made by Mr. Britt to approve the request. Motion seconded by Ms. Coker. **Council Action:** Motion made by Mr. Abusaft to approve the request. Motion carried.

B. Chief Cody McCarley stood to provide information on his request for the **Trinity Fire Department** to accept a non-cash donation from the Gary Sinise Foundation for equipment. (Replacement fire hose, nozzles, and intakes for one engine company - including 1500ft of 4-inch supply line, 3600ft of attack line, (7) nozzles, and (2) large diameter hose intakes.) Motion made by Mr. Britt to approve the request. Motion seconded by Ms. Coker. **Council Action:** Motion made by Mr. Abusaft to approve the request. Motion carried.

C. Chief Cody McCarley provided information on his request for the **Trinity Fire Department** to apply for the VSAFE Grant in the amount of $14,050 for a Firecom Headset System for Rescue Squad 5 and other minor equipment. Motion made by Mr. Britt to approve the request. Motion seconded by Ms. Coker. **Council Action:** Motion made by Mr. Abusaft to approve the request. Motion carried.

D. Received information regarding activities of Building Codes and Environmental Enforcement Departments.

XV. **Land Use Committee**
Honorable Grant DeShields, Chairman
Honorable Bob Walker, Member
Honorable Manning Lynch, Member

A. Received Planning Department Reports on Development Activity.

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

XVI. **Public Works, Buildings and Grounds Committee**
Honorable Manning Lynch, Chairman
Honorable David Britt, Member
Honorable Jessica Coker, Member

A. Kevin Farmer, Solid Waste Manager, introduced the new Sustainability and Recycling Program Manager, Allison Brockman. He then provided information regarding a request made by the **Public Works Department** to apply for the SC-DES Used Oil Grant for the funding of public education to promote the waste oil recycling program and professional development for recycling conferences and/or training. Funding is also being requested for supplies and equipment. Motion made by Ms. Coker to approve the grant application submission. Motion seconded by Mr. Britt and carried. **Council Action:** Motion made by Mr. Lynch to approve request. Motion carried.

B. Kevin Farmer, Solid Waste Manager, provided information regarding a request made by the **Public Works Department** to apply for the SC-DES General Recycling Grant for the funding of repairs to an existing site operator building which will aid in the continued safety, comfort, and overall aesthetics, and ability to continue site operator services to the public at the Enoree Recycling Collection Center. Motion made by Ms. Coker to approve the grant application submission. Motion seconded by Mr. Britt and carried. **Council Action:** Motion made by Mr. Lynch to approve request. Motion carried

C. Kevin Farmer, Solid Waste Manager, provided information regarding a request made by the **Public Works Department** to apply for the SC-DES Hub and Spoke Grant for the purchase of an air curtain burner (pending FY26 Budget approval) to aid in the management of wood waste for Spartanburg County. Motion made by Ms. Coker to approve the grant application submission. Motion seconded by Mr. Britt and carried. **Council Action:** Motion made by Mr. Lynch to approve request. Motion carried

D. Kevin Farmer, Solid Waste Manager, provided information regarding a request made by the **Public Works Department** to apply for the SC-DES Waste Tire Grant for funding to help maintain the tire recycling management program; funds will offset tire contractor fees. Motion made by Ms. Coker to approve the grant application submission. Motion seconded by Mr. Britt and carried. **Council Action:** Motion made by Mr. Lynch to approve request. Motion carried

E. The following **Capital Penny Update** was presented by Cole Alverson, County Administrator. Phase II - Utility relocation is on schedule. 160 S. Church Street demo bid has been awarded and should mobilization first week or second week in April. Cell tower has been removed. Design is continuing to progress and will go before the City's design review board in early April. We expect to release images of some renderings jointly with the City so they can be shared where we are with the project. Roads Capital Penny - Last month, Council woman Coker

requested that we pull together a written update. An extensive report has been prepared by Travis Brown to show all projects we are currently working on in infrastructure. You all will be pleasantly surprised at the level of activity we have and how many different areas we are simultaneously touching. The credit goes to Travis Brown and his talented team. The report is included in today's packet and will be provided going forward.

F. Updated information was received regarding the activities of the Public Works Department.

XVII.

1. Michael Jackson, The Forrester Center for Behavioral Health Board Chair, stood to provide council with an update of the Forrester Center and the board reappointments. He passed out handouts to the Council members with the TFC attendance records. TFC provides more than 30 programs to the community many of which are focused on stopping the Opioid crisis. Since it's peak in 2022, deaths from opioid use are declining. Recent number indicating a 6% drop from 2022-2023. An even steeper decline estimated from 2023-2024. We are seeing positive progress in the county and across the state as well. Our best weapon is educating the public. Greer is a specific area that we have targeted. It was a hotspot overdose a few years ago. TFC built and initiative starting with pure recovering coaches and Narcan saturation. Followed by a walk-in medicated assisted treatment clinic. Now according to the state agency Department of Alcohol and Other Drug Abuse Services (DAODAS), Greer is no longer considered a hotspot area. We are looking to duplicate that in another area that is experiencing a higher level of overdose, which is the Landrum Campobello area. We are making strides towards that goal so we can see the same results. The Board of Directors is pleased with the growth, spirit, and direction of TFC. We currently have 4 board members currently up for reappointment. Josh McCarley was reappointed this evening. The other are Michael Jackson, Susan Richards and Anna Seegar. All 4 have been on the board for years. They have met or exceeded all attendance requirements and have presided over the agency during its move to its new location near Mary Black and transition to a 501c3 agency. Mr. Jackson asked that Council reappoint the members previously named as they will continue to serve until they are reappointed or replaced per the Ordinance.

2. Kenny Price stood to discuss the Courthouse not being handicap accessible. He reference his recent trip to the courthouse on the 3rd floor. In Amy Cox and Mr. Barnette's Offices the transition from the floor to carpet is difficult. It is hard to get over the "hump" without assistance. This issue is throughout the building. $1.3 M was paid to build the courthouse with his taxpayer dollars. Mr. Price said the same company that built the courthouse is going to get the contract for the new administration building. He said, "If they can't do one, how can they get the other?" Bill No. S264 it allows people with disabilities to start small businesses.

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

Mr. Price ask Council to look at the bill for resources and allow disabled people in Spartanburg County to start businesses. He asked for $4M twelve years ago for this initiative. He is still fighting for this. In order to get the money, you have to come to Spartanburg County Council or put your business in Spartanburg County only. The person applying will have to control 51% of that business. They can have partners, but the applicant will have 51% ownership in the business.

Follow up: Mr. Lynch asked Mr. Alverson to look at the items mentioned about the courthouse.

XVIII.

A. Motion made by Mr. Britt to render second reading to an Ordinance authorizing the execution and delivery of a Special Source Credit Agreement by and between Spartanburg County and **1017 Florida, LLC.** Motion seconded by Mr. Mabry and carried.

B. Motion made by Ms. Coker to render second reading to an **Ordinance to amend Chapter 6 of the Spartanburg County Code of Ordinances entitled "Animals"** to provide for enhanced animal welfare, increase public safety, protect community health, provide legal clarity, and increase responsibility and accountability for owners of animals. Motion seconded by Mr. Mabry and carried.

XIX.

A. Motion made by Ms. Coker to approve the Application for Special Public Event Exclusion from the Noise Ordinance requested by **Teu Thang, Community of Khmer Buddhist** from 1:00 p.m. until 11:55 p.m. on Saturday, April 5, 2025; and from 11:00 a.m. until 8:00 p.m. on Sunday, April 6, 2025, for a Cambodian New Year Celebration at 841 Shiloh Church Road, Wellford, SC 29385. Motion seconded by Mr. Britt and carried.

B. Motion made Mr. Britt to approve the Application for Special Public Event Exclusion from the Noise Ordinance requested by **Ron Ork** from 1:00 p.m. until 11:59 p.m. on Saturday, April 12, 2025; and from 11:00 a.m. until 11:59 p.m. on Sunday, April 13, 2025, for a Cambodian New Year Celebration at 770 Bryant Road, Spartanburg, SC 29303. Motion seconded by Mr. Mabry and carried.

C. Motion made by Mr. Britt to approve the Application for Special Public Event Exclusion from the Noise Ordinance requested by **Greer Dragway** from 4:00 p.m. until 11:59 p.m. on Saturday, April 12, 2025; May 17, 2025; and May 31, 2025, for a Drag Race at 1792 Dragway Road, Greer, SC 29651. Motion seconded by Mr. Walker and carried.

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

XX.

A. The following Budget Amendment Resolutions were provided to County Council: Budget Amendment Number 2 sets up for use the Rapid Response Additional Assistance grant received from the SC Dept of Employment and Workforce for the purpose of providing additional funds to help address the demand for Dislocated Worker services that cannot be met with local formula funds. Budget Amendment Number 203 sets up for use program income received from HOME and CDBG participants in January 2025 and February 2025. These funds will be used with the respective program for which they were received, HOME or CDBG. Budget Amendment Number 464 recognizes revenue received from insurance companies for totaled Sheriff's Office vehicles. Reimbursement was received during FY25 for asset #3033 to be used to purchase replacement vehicles. Budget Amendment Number 475 sets up for use the new Disaster Assistance Program Grant received from the South Carolina State Housing Trust Fund. Budget Amendment Number 515 recognizes revenue received through February into the Gambling, State Drug, and Federal Drug Funds. Budget Amendment Number 516 authorizes the transfer of $60,000 from the Communications Radio Software Upgrade project (CP202000825), to the Communications Flooring System project (CP41200425). Excess funds are anticipated in the Software Upgrade project and the transfer will cover cost for the additional 20-tons of cooling capacity needed for the 4th floor data room. Budget Amendment Number 532 authorizes the transfer of $3,774.85 from the Radio Dispatch Consoles project(CP20200324), to the Communications Radio Replacements project(CP20200125). Excess funds are expected in the Radio Dispatch project and this transfer will cover the purchase of an additional consolette radio replacement for the City Fire VHF. Budget Amendment Number 546 transfers funds from the CSB Parking Lot project (CP41201122) to the Coroner's Relocation project (CP41200525). This project is complete, and excess funds will provide for the planning & design phase of the Coroner's Relocation project. Additionally, unbudgeted revenue from the state retirement credit will be recognized and provide supplemental funds for this phase of the project. Budget Amendment Number 568 transfers funds from State Retirement credits to the Probate Court's Digitization of Mental Health Records project (CP25800425). Budget Amendment Number 575 sets up for use original budget for the 2025 Palmetto Pride Grant award. Budget Amendment Number 628 authorizes the transfer of additional funds to the Disaster Recovery Fund to cover anticipated expenditures related to hurricane recovery efforts for the next month. This funding will be provided by a temporary allocation from prior year Capital Project Reserves. This allocation could result in delays in planned capital purchases in the near future, however, the delays are not anticipated to have a significant long-term impact on overall capital spending due to the fact that reserves will be restored once FEMA reimbursements are received. Budget Amendment Number 641 sets up for use South Carolina Opioid Recovery Funds received to

spend during the period of performance of April 2025 to March 2026. Authorized Staffing for Detention Facility will be increased by (8) full-time positions. This includes (2) County Care Specialists (Grade 11), which carry an estimated budget impact of $132,300, (2) Re-Entry Specialists (Grade 12), with an estimated budget impact of $145,000, and (4) Registered Nurses I-IV (Grade 17-20), with an estimated budget impact of $417,000. All personnel expenses will be covered by current and future receipt of Opioid Recovery Funds. Additional funds will be used for the implementation of the approved program uses. Budget Amendment Number 25025 amends authorized staffing in Fleet Services by reclassifying position #1378, Auto Mechanic Helper, into a Diesel Mechanic I. The Diesel Mechanic position is part of a tiered system that ranges from a Diesel Mechanic I (Grade 11) to a Diesel Mechanic IV (Grade 16). This reclassification will have an approximate budget impact of $3,876 for the remainder of FY25 and an approximate budget impact of $12,596 for FY26. Budget Amendment Number 25026 amends authorizing staffing at the Coroner's Office by reclassifying the Education Coordinator from the public safety salary table to the standard salary table. This change will no longer require the Education Coordinator to be a sworn position while allowing us savings of $1,049 for the remainder of FY25 and $3,148 for FY26.

Motion made by Ms. Coker to approve the Budget Amendment Resolutions provided to Council. Motion seconded by Mr. Mabry and carried.

XXI.

Meeting adjourned.

SPARTANBURG COUNTY COUNCIL

By: _____
A. Manning Lynch, Chairman

Attest:

_____
Angela G. Walker
Clerk to Council

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

JOHNSON EXHIBIT 5

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

MINUTES
County Council Meeting

Executive Session

Monday, April 21, 2025
4:00 P.M.

Spartanburg County Council met on Monday, April 21, 2025, at 4:00 p.m. in Conference Room Two of the County Administrative Office Building. The following were in attendance: Honorable Manning Lynch, Chairman; Honorable David Britt, Vice-Chairman; the Honorables Monier Abusaft, Jack Mabry, Grant DeShields, Bob Walker, and Jessica Coker, Council Members; along with Cole Alverson, County Administrator; Earl Alexander, Deputy County Administrator; Kevin Stiens, Assistant County Administrator; John Harris, County Attorney; and Ryan Gaylord, Deputy County Attorney. In compliance with the Freedom of Information Act, notice of this meeting was provided in advance to the local news media and other interested parties.

I. Chairman Lynch called the meeting to order.

II. Motion made by Mr. Britt to go into Executive Session to discuss the following items. Motion seconded by Ms. Coker and carried.

A. Receipt of legal advice subject to attorney-client privilege regarding the contractual terms related to the purchase of property located adjacent to Timken Community Center and the former Cowpens Middle School.

B. Receipt of legal advice subject to the attorney-client privilege regarding the potential appointments to The Forrester Center Board.

C. Receipt of legal advice subject to attorney-client privilege regarding litigation related to a land-use issue.

D. Receipt of legal advice subject to attorney-client privilege regarding additional tools for blight removal.

Action was required following the Executive Session on Item A to authorize the County Administrator and County Attorney to proceed with the acquisition of two properties located adjacent to the Timken Community Center and the former Cowpens Middle School.

III. Meeting adjourned.

Spartanburg County Council

By: _____
A. Manning Lynch, Chairman

Attest:

_____
Angela G. Walker
Clerk to Council

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

MINUTES
County Council Meeting

April 21, 2025

Spartanburg County Council met on Monday, April 21, 2025, in the County Council Chambers, 366 N. Church Street, Spartanburg, SC, at 5:15 p.m. The following attended: Honorable Manning Lynch, Chairman; Honorable David Britt, Vice-Chairman; Honorables Monier Abusaft, Jack Mabry, Grant DeShields, Bob Walker, and Jessica Coker, Council Members; along with Cole Alverson, County Administrator; Earl Alexander, Deputy County Administrator; Kevin Stiens, Assistant County Administrator; John Harris, County Attorney; and Ryan Gaylord, Deputy County Attorney.

In compliance with the Freedom of Information Act, notice of this meeting was provided in advance to the local news media and other interested parties.

The meeting was live streamed via YouTube. Links and instructions for accessing this meeting via computer or mobile device were made available on the County's webpage and provided to the local media.

I.

Chairman Lynch called the meeting to order.

II.

Invocation was rendered by Chaplain Robert Hawkins.

III.

Councilman Bob Walker led the Pledge of Allegiance.

IV.

A. Motion made by Mr. Britt to approve the minutes of March 17, 2025 (Regular Meeting). Motion seconded by Mr. Mabry and carried.

V.

A. Chairman Lynch declared open a public hearing to consider the proposed enactment of an Ordinance authorizing the delivery by Spartanburg County, South Carolina of a Fee in Lieu of Tax Agreement by and among the County, **Airsys Cooling Technologies, Inc**., **a South Carolina Corporation**, and **Sacred**

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

Mountain LLC, A South Carolina Limited Liability Company. No one appeared, and the matter was closed.

B. Chairman Lynch declared open a public hearing to consider an Ordinance to enter into an agreement for the development of a **Joint County Industrial and Business Park by and between Spartanburg County and Union County, South Carolina.** No one appeared, and the matter was closed.

C. Chairman Lynch declared open a public hearing to consider the proposed enactment of an Ordinance authorizing the delivery by Spartanburg County, South Carolina of a Fee in Lieu of Tax Agreement between the County and **Valara Holdings LLC, a Delaware Limited Liability Company; BCDC LLC (Series 1), a Marshall Islands Series LLC; HPC Holdco LLC, a Marshal Islands LLC; and DC2 Services LLC (Series 2), a Delaware series LLC.** No one appeared, and the matter was closed.

D. Chairman Lynch declared open a public hearing to consider the proposed enactment of an Ordinance authorizing the delivery by Spartanburg County, South Carolina, of a Fee in Lieu of Tax Agreement between the County and **Valara Holdings LLC, a Delaware Limited Liability Company.** No one appeared, and the matter was closed.

E. Chairman Lynch declared open a public hearing to consider an Application for Special Public Event Exclusion from the Noise Ordinance requested by **Norasinh Sivilay, Laotian Association of Spartanburg, SC** from 11:00 a.m. until 9:00 p.m. on Friday, April 25, 2025; Saturday, April 26, 2025; and Sunday, April 27, 2025, for a Laotian New Year Celebration at 470 Fox Drive, Spartanburg, SC 29302. No one appeared, and the matter was closed.

VI.

A. Motion made by Mr. Britt to authorize the County Administrator and County Attorney to proceed with the acquisition of two properties located adjacent to the Timken Community Center and the former Cowpens Middle School according to the terms discussed in Executive Session. Motion seconded by Mr. Mabry and carried.

VII.

Motion made by Mr. Abusaft to reappoint **Mary Ann Washington Deku** to Community Development Advisory Committee. Motion seconded by Mr. Britt and carried. Motion made by Mr. Mabry to reappoint **Douglas Ray Fitch** to the Cooley Springs/Fingerville Fire Service Area. Motion seconded by Mr. Britt and carried. Motion made by Mr. Britt to reappoint **Kenneth R. Malgren** and **Henry E. Burch, Jr**. to the Lakewood Hills Special Tax District. Motion seconded by Mr. Mabry and carried. Motion made by Ms. Coker to appoint **Gregg A. Gibson** to the Poplar Springs Fire Service

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

Area Board. Motion seconded by Mr. Britt and carried. Motion made by Mr. Walker to reappoint **Norman Rudy Jordan, Jr**. to the Tyger River Fire District Board. Motion seconded by Mr. Britt and carried. Motion made by Mr. Abusaft to appoint **Anthony Sears, II** to the Una Community Fire Service Area. Motion seconded by Mr. Britt and carried. Motion made by Mr. Abusaft to reappoint **Karra Smith Williams** to the Community Development Advisory Committee. Motion seconded by Mr. Britt and carried. Motion made by Mr. Mabry to appoint **Alexandria Denise Lyles-Dawkins** to the Community Development Advisory Committee. Motion seconded by Mr. Britt and carried.

VIII. **Presentation regarding Spartanburg County's "Spartan Regiment"**

Presenter(s): Brent D. Cobb, Veterans Affairs Director
R. Todd Stephens, County Librarian

Mr. Cobb and Mr. Stephens provided a presentation of our history in celebration of the 250th anniversary of the start of the Revolutionary War. A copy of the presentation is available in the backup material.

Mr. Cobb began by stating that the Spartanburg County Veteran's Affairs has a mission to provide worldclass service to our veterans. They have served veterans from 18 counties and 12 states and 3 countries this year. The presentation was on preserving the legacy of where we come from and where we are continuing to go. Mr. Cobb provided the following information: Friday marked the 250th anniversary of when Dr. Joseph Warren called upon Paul Revere to embark on his legendary 'Ride to Revolution.'" Paul was given the task of riding to Lexington, MA with news that the British were coming. On the evening of April 18, 1775, he rode with his orders. Spartan Regiment was formed by Colonel John Thomas in September 1775. The regiment was originally formed at Wofford's Iron Mill. In late 1778, the Spartan Regiment divided, and Major Thomas Brandon assumed command of the 2nd Spartans. Our county has more Revolutionary War engagements sites than any other locale in the United States. "On April 19, 1775, the iconic 'shot heard 'round the world' signaled the beginning of the American War of Independence, which lasted from 1775 to 1783." The regiment participated in numerous engagements within the Spartan District and in neighboring areas, including: The Snow Campaign, Battle of Cowpens, Battle of Kings Mountain, Battle of Musgrove Mill, Battle of Ramsour's Mill, Battle of Cane Creek, Siege of Charleston. As well as several other significant encounters (37 total).

Todd Stephens thanked the Council and Administration for the continued support of the Public Library Services. On a personal note, Mr. Stephens thanked Council for listening to his father over the years. His father passed in June 2024 and was a huge advocate for Glendale. In the summer of 2023, Mr. Stephens received a call regarding the rare never before displayed Revolutionary War Flag is now in view at the museum of the American Revolution in Philadelphia. Mr. Stephens sent someone to Philadelphia to find out the story about the flag.

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

Mr. Stephens continued by providing+ the following information: The Library and flags have a history. The flag contains two ribbons with regiment's name and state. The stripes representing thirteen colonies. The dog symbolizing bloodthirsty man referenced in Shakespeare's "Othello". The snake representing defense and resistance. The regiment was established at Wofford's Iron Works, located in the Spartan District. The City of Spartanburg, founded in 1785, was named in honor of the Spartan Regiment. The regiment's flag is widely regarded as the most important historical artifact connected to Spartanburg's Revolutionary War legacy. The flag was discovered having been stored for over two centuries by the descendants of Maj. Thomas Brandon. Accompanied with a chest where Brandon stored the flag: Was an early to mid-19th century handwritten note of provenance by Brandon's grandson. Acquired by Revolutionary War collectors Nick Manganiello and Francine Carrick. Rarity- This is one of only 26 surviving flags from an estimated 500 Revolutionary War-era flags, and one of just six known flags associated with Southern state militias. According to auction records, Revolutionary War flags rank among the most valuable historical artifacts from the period. Delaware Militia Colors "Captured by English Capt. William Dansey" Battle of Brandywine: September 11, 1777. Connecticut Regimental Colors Second Continental Light Dragoons Elements served as Gen. George Washingtons bodyguard. 3rd Virginia Regiment Flag -Three Colors Earliest surviving documented American Flag with 13 Stars. Regiment was captured on May 29, 1780, at the Battle of Waxhaw's, SC. 2nd South Carolina Regiment Regimental Flag is shared between the Smithsonian and SC State Museum. Col. William Moultrie was the first commander Capt. Francis Marion was appointed Regimental Junior Officer. Acquisition- Once in a lifetime opportunity. Visually representative of Spartanburg History "…this flag is a National treasure…" Through the motivation, Spartanburg County Library acquired the flag. It is currently in Philadelphia on exhibition for the next 4-5 months. It will then be delivered to Spartanburg.

Mr. Cobb gave double-sided prints of the actual flag to each Council member and administration along with a ceremonial coin that has the Battle of Cowpens, the Snow Campaign, and the Battle of King Mountain on the front, and Col. John Thompson, the 1st Commander on the back. That is one way of continuing our legacy of the flag. Mr. Cobb showed and described awards that are given during the "Hall of Heroes" annual event to honor our local veterans, veteran supporters, and community partners. Twenty-one veterans are inducted. The awards are named after our Medal of Honor recipients.

There is another class coming up. Nomination forms are available on the County website until June 31st. The ceremony will be held on October 16th at the lower level of the memorial auditorium at 7pm. The public is encouraged to attend. Councilman Bob Walker was inducted into the Hall of Heroes last year for his service to our state and military.

Mr. Abusaft made the following comment about the library. He said he loves our library, and that Todd does a wonderful job. He has been dealing with him since their reclaiming of the Juneteenth flag in 2016. The have been great at finding art history and helping it find its way home. Mr. Britt said we have the very best library and Library Board in the state. He also complimented Todd Stephens' late father for his fight and efforts in pushing for the Glendale area and a park that will soon open therein.

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

IX.

Earl Alexander, Deputy County Administrator, presented the following Animal Services Update for the Pet Resource Center: Construction: Everything is on schedule and on budget and on track for completion by the end of this year. All the underground utilities including plumbing within the building footprint are now complete. All of the concrete foundations and floor slabs have now been poured. All curbs and gutters have been installed. They are prepping to install asphalt binder. Concrete block walls are going up. We currently have 2 twelve-person masonry crews that are working daily on our facility. You are encouraged to look at our website construction cam and watch the building go up. Staffing: Our Deputy Director, Kyla Wagner, has started and she hit the ground running. On May 5th, the Community Relations Manager will start. Our Foster Coordinator, Madison Swank, has started they are working great together downstairs. Our Volunteer Coordinator is currently going through the onboarding process. The Senior Administrative Assistant interviews were completed today. An offer will be made soon. The goal is to implement the safety net programs so we can start diverting animals from Greenville County Animal Care as soon as possible. One day one, the goal is to have zero animals coming here from Greenville County because we are doing such a great job.

X. **Economic Recruitment and Development Committee**

Honorable David Britt, Chairman
Honorable Manning Lynch, Member
Honorable Jack Mabry, Member

A. Motion made by Mr. Lynch to render first reading to an Ordinance to authorize and approve an agreement for the development of a Joint Industrial and Business Park **(Aero Park)** by and between Spartanburg County and Cherokee County, such Industrial and Business Park to be geographically located in Spartanburg County and Cherokee County and established pursuant to section 4-1-170 of the code of laws of South Carolina 1976, as amended; and other matters related thereto**.**. Motion seconded by Mr. Mabry and carried.

Council Action:

Motion made by Mr. Britt to render first reading to the Ordinance. Motion carried.

B. Motion made by Mr. Lynch to render first reading to an Ordinance to amend the agreement for the development of a Joint County Industrial Park by and between Spartanburg County and Cherokee County, South Carolina, so as to include additional property in Spartanburg County as part of the Joint County Industrial Park, and other matters relating thereto. (**Sacred Mountain, LLC and 1017 Florida, LLC**)**.** Motion seconded by Mr. Mabry and carried.

Council Action:

Motion made by Mr. Britt to render first reading to the Ordinance. Motion carried.

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

XI. **Public Health and Human Services Committee**

Honorable Bob Walker, Chairman
Honorable Monier Abusaft, Member
Honorable Grant DeShields, Member

A. Kathy Rivers, Community Development Director, came before Council again as she did at the March 17th meeting requesting authorization to submit to HUD the **Community Development Block Grant Program and Home Investment Partnerships Program FY_2025-26 Annual Action Plan Funding Recommendations.** During the initial presentation last month, questions were asked, and additional information was requested by Mr. Abusaft. The plan was then tabled until the April 21st meeting. Since that time, productive meetings were conducted with Mr. Abusaft and a couple of the agencies where questions and concerns were addressed. Motion made by Mr. Abusaft to approve the annual action plan for submission to HUD. Motion seconded by Mr. DeShields and carried. **Council Action:** Motion made by Mr. Walker to approve the Annual Action Plan. Motion carried.

XII. **Personnel and Finance Committee**

Honorable Jessica Coker, Chairman
Honorable Bob Walker, Member
Honorable Jack Mabry, Member

A. Cole Alverson, County Administrator, provided a brief Preliminary Budget Presentation and Budget Calendar. Each year Council is provided with a brief introductory presentation to get you up to speed on where we are in the process of developing the recommended budget. Afterwards you will be asked to sign on to on a proposed calendar so we can have our meeting cadence down between now and when our appropriations lapse on June 30 this calendar year. The FY2026 Budget process we estimate to have available in the general fund $162.2M. That is up from about $154M in the current fiscal year. Which is about $8.6M in revenue growth. That includes a little over $8M in estimated interest. Last year our budget included an estimated reserve of about $9M for interest earnings. Mr. Alverson announce that on May 7th we do the final internal review with the department heads, elected and appointed officials to go through the recommendations to Council to ensure nothing was missed. A special work session has been scheduled with Council on May 14th at 2:00 p.m. to give you a full presentation on both the operating budget and 5-year CIP. Motion to approve the Budget Calendar was made by Mr. Mabry. Motion seconded by Mr. Walker and carried. **Council Action:** Motion made by Ms. Coker to approve the request. Motion carried

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

B. Earl Alexander, Deputy County Administrator, provided information in support of a request for four (4) new positions at the Pet Resource Center. Motion made by Mr. Mabry to approve the request**.** Motion seconded by Mr. Walker and carried. **Council Action:** Motion made by Ms. Coker to approve the request. Motion carried.

C. Cole Alverson, County Administrator, provided information in support of his request for $2.7M from general fund capital reserve for our Hurricane Helene Response and Recovery Funds. After discussion, a Motion was made by Mr. Mabry to approve the request. Motion seconded by Mr. Walker and carried. **Council Action:** Motion made by Ms. Coker to approve request. Motion carried.

D. Received updated financial data and personnel vacancy report.

XIII. **Livability Committee**

Honorable Jack Mabry, Chairman
Honorable Monier Abusaft, Member
Honorable Grant DeShields, Member

A. Motion made by Mr. Abusaft to approve the request made by the **Parks and Recreation Department** to submit a grant application to the Timken Foundation for funding to be utilized for park improvements. Motion seconded by Mr. DeShields and carried. **Council Action:** Motion made by Mr. Mabry to approve request. Motion carried.

B. Received information regarding activities of the Parks Department.

XIV. **Public Safety and Judiciary Committee**

Honorable Monier Abusaft, Chairman
Honorable David Britt, Member
Honorable Jessica Coker, Member

A. Mr. Alexander, Deputy County Administrator, provided information in support of his request to accept all redline items in the **Ordinance amending Chapter 6 of the Spartanburg County Code of Ordinances entitled "Animals"** to provide for enhanced animal welfare, increase public safety, protect community health, provide legal clarity, and increase responsibility and accountability for owners of animals. Motion made by Mr. Britt to approve the redline amendments on second reading. Motion seconded by Ms. Coker. **Council Action:** Motion made by Mr. Abusaft to approve the request. Motion carried.

B. Mr. Alexander, Deputy County Administrator, provided information in reference to the approval of an **Ordinance to regulate outdoor burning during a Burning Ban within the unincorporated areas of Spartanburg County**; to

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

provide for the enforcement thereof, and matters related thereto. Motion made by Mr. Britt to approve the requestion. Motion seconded by Ms. Coker. **Council Action:** Motion made by Mr. Abusaft to approve the request. Motion carried.

C. Motion made by Ms. Coker to approve the **American Legion Boiling Springs Post No. 200** to solicit funds from motorists on Saturday, May 24, 2025, between the hours of 9:00 a.m. until 1:00 p.m. with a rain date of Saturday, May 31, 2025, to collect funds at 4th Street and Highway 9 Intersection at McDonalds; Valley Falls Road next to Ace Hardware; Intersection of Highway 9 and Rainbow Lake Road; and Old Furnace Road and Highway 9 Intersection for Community Service, Boys State and Law Cadet School. Motion seconded by Mr. Britt and carried. **Council Action:** Motion made by Mr. Abusaft to approve the request. Motion carried.

D. Received information regarding activities of Building Codes and Environmental Enforcement Departments.

XV. **Land Use Committee**

Honorable Grant DeShields, Chairman
Honorable Bob Walker, Member
Honorable Manning Lynch, Member

A. Received Planning Department Reports on Development Activity.

Mr. Abusaft stepped out of Chambers at 6:33pm.

XVI. **Public Works, Buildings and Grounds Committee**

Honorable Manning Lynch, Chairman
Honorable David Britt, Member
Honorable Jessica Coker, Member

A. Travis Brown, Director of Public Works, provided information regarding a request for funding from the Steve Belue Infrastructure Funding to assist with the cost of improvements along Canaan Rod at the intersection with Carolina Country Club Road. Motion made by Mr. Britt to approve the request. Motion seconded by Ms. Coker and carried. *(Mr. Abusaft was not in Chambers to vote.)* **Council Action:** Motion made by Mr. Lynch to approve request. Motion carried.

Mr. Abusaft returned to Chambers at 6:38pm.

B. Road Enhancement Program update provided by Travis Brown for informational purposes only. Mr. Brown announce that we now have two resources that are available to the public on the County's website at www.spartanburgcounty.org Go to Departments and then Purchasing. The first resource is the Project Viewer. The viewer will allow you to see the stage and cost of any project being

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

managed by Spartanburg County. The Project Letting Schedule will show you all of the projects we have coming up for bid. The following projects are completed by SCDOT Resurfacing Complete and underbudget: Highway 290 - Reidville Road to N. Danzler (Byrnes HS); N. Daniel Morgan – Behind the new Spartanburg County Courthouse and W. St. John to N. Church Street.; W. Main Street – Reidville Road to St. John Street; and St. John Street – W. St. John Street to W. Main Street. SCDOT Resurfacing: The Remainder of Tier 1- Bid Opening was April 8, 2025: Reidville Road (Hwy 296) – Hwy 290 to E. Blackstock; East Main Street – E. St. John Street to S. Converse Street (Denny's Building); and Rogers Group - $6.9M and underbudget. First Half of Tier 2: Bid in Fall of 2025. County/Municipal Resurfacing: Fairforest Road, Ballenger Road, Bryant Rd, Bagwell Farms Subdivision, Victor Hill; and Woodruff, Inman, Cowpens, Reidville, Lyman, Pacolet, Greer, Duncan and Wellford. County Corridors: Seay Road, 4th Street, and Belcher Road. Intersection Improvement Projects: Zion Hill/Sloans Grove, Clark at Bishop Roundabout, Bryant at Flatwood Roundabout, W. Cleveland at Fairforest Realignment, and Old John Dodd Road at Belcher Road. We have SCIIP and ARPA funds for Stormwater improvements. Penny Projects in Design Phase: 14 Intersections = Tiers 2 through 6, 10 Stormwater Culverts = Tiers 1 & 2. 7 County Corridors = Tiers 5 & 6, and 6 County Bridges = Tiers 2 through 4. County Projects in Design Phase: Hanging Road Road – Valley Falls to Double Branch Road, Lightwood Knott Road – Hwy 417 to Reidville Road, and Frey's Drive at Nazareth Church Road Intersection Improvement. CTC – Recently Completed: 4th Street Intersection Improvement w/Valley Falls Road ($3.5M), Gary Armstong at Hwy 29 Turn Lanes ($300k), Victor Hill at Woods Chapel Roundabout ($1.7M), Berry Shoals at Hwy 290 Turn Lanes ($600k), and Apple Valley at Berry Shoals Roundabout ($2.6M). CTC Approved Resurfacing: Over $10 M approved for resurfacing projects in FY25 – Peachtree Road, Union Street, Jordan Road, and Valley Falls Road. CTC – Projects in Design: New Cut Road at Mt. Zion Road Intersection Improvement, New Cut Road at Blackstock Road Intersection Improvement, Upper Valley Falls at Springfield Road Roundabout, Duncan Reidville at Tucapau Road Realignment, and Turn Lanes at Wellford Landfill. Safety Action Plan: Adopted Safety Action Pan and Vision Zero by 2040 and $16M SS4A Grant from USDOT. Workforce Development: Partnership with SCC, Build for a Better Futures Foundation Hiring Event, MSC-Heavy Equipment Operators Hiring Event, Work Base Learning Program (Internships/Co-Ops). Clark Road Bridge = $3.2M+; Belcher Road Bridge = $3.4M+; Kist Road Bridge = $2.5M+; and Clark and Sugar Ridge Roundabout = $1.5M.

C. The following **Capital Penny Update** was presented by Cole Alverson, County Administrator. Phase II: The utility relocation is going as planned. Spring Street is done, and they are almost up to 160 S. Church Street. On Kennedy Street, they are coordinating with the demo contractor. DemTek has mobilized and begun the abatement process for 160 S. Church Street. They should be done by the end of the week and start demo next week. Design process is continuing. We are approaching the end of design development. We will quickly move into

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

construction documents. We received the first of 2 required approvals from the City's Design Review Board. They were generally supportive and complementary with some relatively minor items to address related to sidewalk areas. We are bidding out the CM At-Risk services. They are due back in this week or so. We will select the contractor who will actually build the project. The private development partner is advancing their design. They will do the wrap on the parking deck. They have the floor plans and unit mixes. They are down to the proforma.

D. Updated information was received regarding the activities of the Public Works Department.

XVII

1. Jermaine Smith, member of the Spartanburg Kennel Club and a Petcare professional for over 25 years. He came to voice his objection to the animal ordinance. Regarding a female dog being bred, it should be based on the preservation of the bloodline and not the monetary gain of the breeding program. AKC already have regulations and guidelines in place and protocols and procedures that allow these individuals to monitor their programs. If we put a limit of the number of how many dogs an individual can have, we are infringing on a person's constitutional right. Dogs have been around since the beginning of time. The are also a part of our future, like the Jetsons. He asked that Council to consider the professional standpoint of addressing the issue of putting regulations on how many pets an individual can have. Especially those breeding for preservation.

2. Diane Balding, a long-term resident of Spartanburg County, a former board member of a Humane Society, and retired veterinarian. She stood in support of the amendments to the Animal Ordinance. In reviewing the ordinance, she read that all dogs over 4 months of age have to have a rabies certificate. That goes for all animals. Breeders license will require an inspection and there may be a charge. Which is the same requirement as other dog owners. She made reference to fees in other Counties.

3. Janet Benjamin came in favor of the amendments to the animal ordinance. She is not a breeder, but an animal lover. She has loved many animals in her lifetime and will help others find their lost animals. Right now, we are in a crisis on finding homes for dogs. Backyard breeders think it is a great way to make money. A number of them do not provide the adequate care, exercise, feed, space, and water that is listed in the ordinance. Those are the basics. If you are operating out of your home, she does not understand why inspections are a problem.

4. Kimberley Plemmons came representing Small But Mighty Dog Rescue, she is a foster with them and also own a small business in Spartanburg County. She understands why breeders to not want to do the paperwork. It is the cost of doing

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

business. We as a country and race, have taken it upon ourselves to breed these animals over the years. We have domesticated them. Most other states and breed programs such as horse and cows, you are regulated and licensed. It is required. You have to maintain records and make sure your bloodlines are clean. Make sure everything is up to date and your animals are vaccinated before you can sell them. There is a reason for that. When you overbreed or crossbreed too many times your get so many deformities like German shepherds with no spine and cannot walk. You will also get dogs with missing bones and joints that have to be euthanized as puppies because they cannot walk. These are puppy mill breeders. If you are a reputable breeder you should have no problem filling out the form and post it on your website.

5. Savannah Chastain and her mother are caregivers for community cats. They trap, neuter and return (TNR). These are services provided by Spartanburg County. They fix an average of 100 cats per year. Which helps decrease the population of stray cats. She support the amends to the animal care ordinance because it clear defines what a community cat is and the roles that a caregiver has. They work hard for free to reduce the over population of stray cats. People who breed animals add to the population of animals which means that breeders should be subject to inspections because they are running a business and making money from the sale of animals. Her father is a small business owner who is subject to inspections and fees, so she believe it is fair for breeders to be held to a certain standard. A pack of dogs have roamed on her school's property and multiple nearby neighborhoods for years. The pack grows because they are not fixed. The pack has killed 8 cats in her neighborhood, and she supports the amendments because it holds owner accountable for allowing dangerous animals to roam. Our citizens deserve to live in a community where we value and care for animals. Animals do not have a voice, so she stood to be their voice and show support for the amendments.

6. Brett Coleman stood on behalf of 4 neighborhoods to speak in opposition to a proposed 88-unit Edger Street Mobile Home Park Development being considered. They have a petition with over 200 people. It is not about opposing affordable housing for new neighborhoods. It is about protecting the character and safety and stability of our community. First is the traffic. Their roads are already strained. Adding dozens and probably hundreds of new vehicles from a high-density trailer park will only make it worse. It is not just an inconvenience; it is a safety issue. More congestion means more accidents and longer emergency response times and more danger for children and families who work, walk, and bike all around there. The entrance from the trail park, will already be very narrow already overcrowded Avon Drive. Second is the overcrowding. The proposed development will cram a high number of units into a small space. Property value is another issue. Many of them invested their life savings in their homes. It is not just numbers on paper, but his family's future. They deserve to live a community where their investment is protected and not undermined. Magnolia Southern Estates, LLC, in Greenville, has received conditional site

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plan approval and awaiting approval from all the Public Works departments. He urged the Council to reconsider this plan.

7. Liz Skomra, run and founded Small But Mighty Dog Rescue, stood in favor of the Animal Ordinance Amendments. They are a 501c registered charity and do not take any money. Everything is voluntary and for the love of the dogs. They do not take salaries. There is an extreme overpopulation issue of dogs and cats. They need help from the breeders with taking care of dogs and keeping them healthy and safe from deadly viruses. This is their 6th year and each year it gets worse. They get calls daily from people finding dogs and they were found or dropped off. Ms. Skomra is 100% in favor of the ordinance. It will hopefully make a dent the huge overpopulation issue.

8. Andy Mickley stood to talk about Earth Day. He represents a grassroots organization called the Plastics Awareness and Reduction Team (PART) Their mission is to inspire and empower Spartanburg to reduce plastic waste. The group has representatives from local and city and county governments. Our Colleges and Universities, Spartanburg businesses, and concerned citizens. Earth Day is tomorrow, and we used the whole month of April to encourage communities to consider how they can be better stewards of the planet. Everyday millions of plastic bags, bottles and utensils and packaging are discarded after just one use. Plastics make up 74% of all SC liter. The plastics do not simply disappear. The linger in our landfills clog our water ways and break down into micro plastics that pollute our soil and water. Plastic waste has infiltrated every corner of our environment. What can we do? We need stronger regulations and policies that limit the use single use plastics. This includes banning or imposing fees on plastic bags and utensils. In the US, 12 states have banned the use of plastic bags. 17 Cities and Couties in SC have also enacted similar bans. We should encourage business to adopt sustainable practices and use ecofriendly practices.

9. Melissa Ripley stood to speak on the animal ordinance as it is written. Some of the language is ambiguous, subjective and potentially criminalizes normal dog behaviors. Section XI:12 There is no definition of heat stress. Who defines heat stress? There is no remedy for what happens when someone breaks into her car to rescue her dog, and her dog is fine. Section XI:21 Allowing animals to urinate and defecate. This order criminalizes your dog urinating on public property. It turns our Animal Control Officers into the pee and poop police. She is against the arbitrary limited on number of dogs allowed, government imposing vaccines as this is a decision between the owner and their vet.

10. Debbi Page commented that she has been showing dogs for 4 years. She has never had a dog without a spine. Their dogs get health tested and go to the chiropractor. Their dogs probably live better that a lot of people. They are not puppy mills and do not agree with the limited number of dogs in the ordinance and do not want to register her dogs with the county. They do not want people

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coming into their homes. Most people have their dogs in the house and do not have a big kennel. It's an invasion of privacy. The dogs are like their children. She feels like they are being penalized. She would like to postpone Council's decision until others have been given and opportunity to express themselves.

11. Tom Davies stood to speak regarding the animal ordinance amendments. He said that it is a privacy problem and a fourth amendment problem. When he had a kennel 15 years ago, people were lined up before the dogs were even born because they were good dogs. Some of the provisions in the ordinance does not do anything about puppy mills. We don't have enough animal controls officers to enforce the ordinance we have now. It's the only business in the County that will require a license.

XVIII.

A. Motion made by Mr. Britt to render second reading to an Ordinance authorizing the execution and delivery of a Fee In Lieu of Tax Agreement by and among Spartanburg County, South Carolina, **Airsys Cooling Technologies, Inc**., **a South Carolina Corporation**, and **Sacred Mountain LLC.** Motion seconded by Mr. Mabry and carried.

B. Motion made by Mr. Britt to render second reading to an Ordinance to authorize and approve an agreement for the development of a **Joint County Industrial and Business Park by and between Union County and Spartanburg County,** such Industrial and Business Park to be geographically located in Union County and Spartanburg County and established pursuant to Section 4-1-170 of the code of laws of South Carolina 1976, as amended; and other matters relating thereto.". Motion seconded by Mr. Mabry and carried.

C. Motion made by Mr. Britt to render second reading to an Ordinance authorizing the execution and delivery of two Fee In Lieu of Tax Agreements between Spartanburg County, South Carolina and **(I) as to the first Fee In Lieu of Tax Agreement, Valara Holdings LLC, and (II) as to the second Fee In Lieu of Tax Agreement, Valara Holdings, LLC; BCDC LLC (Series 1), HPC Holdco LLC, and DC2 Services LLC (Series 2).** . Motion seconded by Mr. Mabry and carried.

D. Motion made by Mr. Abusaft to postpone the third reading of the Animal Ordinance Amendments for 30 days. Motion seconded by Mr. Walker and carried.

XIX.

A. Motion made by Mr. Mabry to approve the Application for Special Public Event Exclusion from the Noise Ordinance requested by **Norasinh Sivilay, Laotian Association of Spartanburg, SC,** from 11:00 a.m. until 9:00 p.m. on Friday, April 25, 2025; Saturday, April 26, 2025; and Sunday, April 27, 2025, for a

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Laotian New Year Celebration at 470 Fox Drive, Spartanburg, SC 29302. Motion seconded by Mr. Britt and carried.

XX.

The following Budget Amendment Resolutions were provided to County Council: Budget Amendment Number 108 sets up for use program income received from HOME and CDBG participants in March 2025. These funds will be used with the respective program for which they were received, HOME or CDBG. Budget Amendment Number 371 recognizes revenue received from local municipalities for drug lab testing and provide additional funding in the Sheriff's Maintenance Agreements budget for a Perkin Elmer invoice. PerkinElmer is the provider for annual maintenance on the Sheriff's Fourier Transform Infrared Spectrometer (FTIR), which is used for drug testing on high-purity samples. Budget Amendment Number 377 transfers budgetary funding from the FY24 Solid Waste Vehicle & Capital Equipment Replacement Project (CP30500124) to the FY23 Solid Waste Vehicle & Capital Equipment Replacement Project (CP30500123). A savings is anticipated in the FY24 project, which will be used to provide additional funding to purchase a golf cart that was originally budgeted from the FY23 project. The bush hog was over budget, resulting in a shortage in the FY23 project. Budget Amendment Number 555 recognizes the FY 2024 Edward Byrne Memorial Justice Assistance Grant (JAG) Program award received from the US Department of Justice. Funds from this award will be used to purchase pass-thru evidence lockers with a refrigerated compartment. The lockers will be built into the wall into the Evidence Room; items can be deposited from the hallway and retrieved from inside the Evidence Room. Budget Amendment Number 559 revises the budget for the School Resource Officer 2025 grant received from SCDPS to reflect the actual award. Award included additional funding for personnel expenses, replacement unforms, mileage, rifles, rifle storage, and ammunition. Budget Amendment Number 564 recognizes funds received from Cherokee County for their use of the Matrix Prosecution Software subscription and storage fees. This subscription is part of the FY23 General Appropriations Bill the Solicitor's Office received in FY23. This BAR will also increase the expenditure budget for future use. Budget Amendment Number 695 amends the original budget for the South Carolina Department of Public Health EMS Division Grant in Aid award for Fiscal Year 2025 to the actual amount of the award and will also add the project to the budget. The grant award is received annually and therefore included in the recommended and adopted budget each year. FY 2025 funds will be used for: 1 - Training aids for continuing education for employees and EMT and Paramedic certification classes. 2 - Mobile FirstNet Ready Broadband Kit. This is a deployable 5G kit to stand up, augment or replace failed internet in emergency/disaster/MCI situations. 3 - Porter Nitronox Field Unit for Rescue 11 for non-narcotic pain control. 4 - Supervisor Ambulance Mobile Data and HQ Station Monitoring System to enhance Field Supervisors to remotely monitor CAD real-time response data and activity, and video security monitoring of EMS Station grounds. Budget Amendment Number 757 recognizes revenue received through March into the State Drug and Federal Drug Funds.

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Budget Amendment Number 772 authorizes the reallocation and use of $83,022 from the FY21 budgeted Steve Belue Funds for a specific road project in FY25. This project request is for improvements along Canaan Rd at the intersection with Carolina Country Club Rd. The total cost of the intersection improvement is $249,066, but the County is being asked to assist with 1/3 of the expenses totaling $83,022. Budget Amendment Number 785 sets up the project for the construction of the ESA Burn Building (CP41201825). This project will be funded from the .5 mill fire levy and has been approved by the Fire Advisory Commission. Budget Amendment Number 796 recognizes revenue received in the General Fund for reimbursements for the Coroner's Office, Sheriff's Office, and Building Codes. The Coroner's Office has received reimbursements for postmortem costs. The Sheriff's Office has received a reimbursement for dry cleaning damages to a deputy's uniform. The Building Codes department has received reimbursement from the State for training classes. This BAR will also set up the expenditure budget in each account for future use. Budget Amendment Number 802 sets up for use unrecognized earned interest from the SLFRF-ARPA program up to December 31, 2024. Budget Amendment Number 804 recognizes revenue for a vest Environmental Enforcement sold to the Sheriff's Office. This ballistic vest is for an Environmental Enforcement employee who transferred to the Sheriff's Office. This BAR will also set up the expenditure budget for future use. Budget Amendment Number 814 authorizes the transfer of $61,000 from the Clerk of Court's Special Projects budget, to CP25500125 Clerk of Court Scanning Project. This will dedicate funds to be available over time as an abundance of historical files continue to be digitized. Budget Amendment Number 819 sets up C Fund project 25010SL approved at the April 17, 2025 CTC meeting. This project is for traffic analysis and concept design at the intersection of Old Furnace Road, Bryant Road, and Fosters Grove Road. All other projects approved at the April CTC meeting will be recognized in a May 2025 BAR. Budget Amendment Number 864 closes C Fund projects 15006L (Phase I 4th Street widening), 23016L (County road safety improvements FY23), 19021L (engineering consultant evaluations), 23004S (FY23 SCDOT paving and set-a-side), 23005L (Clark Road bridge), 21016S (Berry Shoals and Hwy 290 intersection), 23007S (Gary Armstrong and Hwy 29 intersection), and 13010S (Pacolet Gateway project). Each of these projects has been complete or is near completion and remaining balances will be returned to the C Funds unobligated balance for future use. These projects were created before the FY23 C Fund accounting change due to the external audit, therefore no funding strings were created for these projects. Budget Amendment Number 870 authorizes the transfer of additional funds to the Disaster Recovery Fund to cover anticipated expenditures related to hurricane recovery efforts for the next month. This funding will be provided by a temporary allocation from prior year Capital Project Reserves. This allocation could result in delays in planned capital purchases in the near future, however, the delays are not anticipated to have a significant long-term impact on overall capital spending due to the fact that reserves will be restored once FEMA reimbursements are received. Budget Amendment Number 871 carries forward the balance for the municipal road projects from FY24 to FY25. This carryforward was not included in the original carryforward BAR for FY25. The Roads and Bridges

department is ready to obtain POs for these projects, so the balance must be carried forward. Budget Amendment Number 921 allocates funds within the Public Access Land Bank (CP50000225) and establish funding for the acquisition of two parcels that are adjacent to the Timken Community Center. Budget Amendment Number 25027 renames Position # 2203 and # 2204 from a County Care Specialist to a Community Care Navigator. The SC Opioid Recovery Fund notified the County that they had changed the position title. This change will have no budgetary impact. Budget Amendment Number 25028 authorizes the addition of 3 new vehicles to the Parks current fleet. These vehicles will be purchased using the anticipated savings of $115,876 from the Parks Vehicles & Capital Equipment Replacement project (CP50001225). Budget Amendment Number 25029 recognizes the donation of a 1999 Pierce Saber Pumper from Taylors Fire Department. In turn, a 1995 Renegade KME Truck (vehicle #3387) will be sold on Gov Deals. Budget Amendment Number 25030 amends Authorized Staffing by adding four positions to the Pet Resource Center. These positions are as follows: Animal Resource Officer Supervisor (Gr15), Adoption Supervisor (Gr14), Intake Supervisor (Gr14), and Lead Safety Net Specialist (Gr11). This amendment will also authorize the addition of 1 vehicle for the Pet Resource Center. The projected impact for the remainder of FY25 is $115,000, and the impact on FY26 is $390,000. An administrative budgetary transfer will be processed to provide funding from the Department's Contingency.

Motion made by Mr. Mabry to approve the Budget Amendment Resolutions provided to Council. Motion seconded by Ms. Coker and carried.

XXI.

Meeting adjourned.

SPARTANBURG COUNTY COUNCIL

By: _____
A. Manning Lynch, Chairman

Attest:

_____
Angela G. Walker
Clerk to Council

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JOHNSON EXHIBIT 6

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81°

LOCAL NEWS

Spartanburg Co. close to landing nearly $2.8 billion project from mystery company

by: **Robert Cox**
Posted: Feb 18, 2025 / 05:53 PM EST
Updated: Feb 19, 2025 / 07:24 AM EST

SHARE

SPARTANBURG COUNTY, S.C. (WSPA) – Spartanburg County approved a resolution Monday to provide tax incentives in an attempt to land one of the largest investments in South Carolina history.

Spartanburg County Council unanimously approved a resolution to move forward with two Fee In Lieu of Tax (FILOT) Agreements for Project MOC-1, a nearly $2.8 billion investment which would add 27 jobs.

Council member David Britt said MOC-1 would be the second largest single investment ever in the state.

While he couldn't divulge name of the company behind the project or where the project will be located, Britt described it as a high performance computing facility. He said the company is involved in technology, engineering, and aerospace and the facility will generate its own power.

Britt said he's met with company executives and they are "the kind of company we want in the county."

"We want companies that are going to help raise the bar for all of Spartanburg County," Britt continued.

Britt said Spartanburg County is still competing with another state for the project.

The FILOT agreements would set the property assessment at 4% for 40 years and provide a special source tax credit of $30 million over 20 years against the payments in lieu of taxes.

The next step for the project is the first reading of ordinances for the two FILOT agreements. The agreements will require three readings by county council before they are approved.

"Hopefully, very soon, we'll be able to announce the name of the company and where they're going and what they're going to be doing," said Britt.

Britt expressed hope that an announcement would be made before May.

ADD AS PREFERRED SOURCE ON GOOGLE

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https://www.postandcourier.com/spartanburg/business/northmark-strategies-spartanburg-computing-center/article_ac48993f-b936-4ee6-aa21-da9867e1ff7c.html

Computing center coming to Spartanburg County with $2.8B investment, 2nd largest in SC history

BY MAX WHITE MWHITE@POSTANDCOURIER.COM

APR 21, 2025



Spartanburg County Council members conduct a meeting on April 21. They unanimously gave second reading approval to incentives for a $2.8 billion project coming to the county.

MAX WHITE/STAFF

SPARTANBURG — South Carolina's second-largest single investment to date is coming to **Spartanburg County**.

NorthMark Strategies, through its subsidiary Valara Holdings, plans to transform a former manufacturing facility in the county into a high-performance computing center. The company is expected to invest $2.76 billion and create 27 full-time jobs.

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The center at 4000 S. Pine St. will be one of the most advanced high-performance computing centers in the world, the company said. It will leverage "cutting-edge technology to support complex computational tasks in machine learning, data analytics, and complex systems modeling."

Initial operations are expected to come online in the third quarter of 2026. The bulk of the investment will be spent on equipment for the center.

NorthMark Strategies looked at more than 100 locations and chose Spartanburg County. On Feb. 17, when the project was first announced but the company was still unnamed, Spartanburg County Councilman David Britt said the county was **competing with another state for the project**.

Jen Byrne, the president of NorthMark, said Spartanburg stood out for its "strong community, skilled workforce, dynamic economy and strategic advantages." **NorthMark Strategies** is an investment firm based in the United States that combines "capital, innovation, and engineering to drive long-term value."

"Our investment in this HPC (high-performance computing) facility solidifies our commitment to building for future growth and being prepared to meet the growing demand for HPC capabilities among our current and future investment partners head-on," Byrne said.

The project will be designed to generate its own power needed for operations, meaning it won't strain the community's power grid. As data centers **have come to South Carolina in recent years**, debates have raged about how to handle the **heavy strain they put on the grid**. This project's ability to self-generate power nullifies that concern.

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Natural gas from an existing pipeline will fuel the center's generators. The center is not expected to draw much more energy than the site's former facility.

Spartanburg County Council members unanimously gave second reading approval to economic incentives for the project at a meeting on April 21. A final reading is needed before they are finalized.

The incentives would lower the company's tax assessment ratio to 4 percent for the property for 40 years. A special source revenue credit agreement is also included that could be used to cover infrastructure costs.

The company will repurpose the former Kohler manufacturing facility for the high-performance computing center. Kohler announced **the closing of its Spartanburg County facility** in January 2024.

This investment is now the state's second-largest single investment, only behind a **$3.5 billion battery recycling site in Berkeley County** from Redwood Materials.

Britt, county council vice chair and chairman of the economic development committee, emphasized the importance of the county's ability to use a **fee-in-lieu agreement** to land the company. He said it would not have come without the tax mechanism and called the investment a "game changer" for not only the Upstate but all of South Carolina.

"It is a great project, I'm really excited," Britt said. "This is a great company that's going to be a good corporate citizen that doesn't tax our infrastructure."

MAX WHITE

REPORTER

Max White is a reporter for **The Post and Courier Spartanburg** primarily covering local government and business. He is a South Carolina native of Charleston and graduated from the University of South Carolina in December 2023.

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NORTHMARK
STRATEGIES GROUP

MENU

ANNOUNCEMENT: APRIL 22, 2025

NorthMark Strategies Announces Historic $2.8 Billion Investment in Spartanburg, S.C. High-Performance Computing Facility

"This investment solidifies South Carolina's position as a leader in technology and innovation."

Spartanburg, S.C. – U.S.-based NorthMark Strategies, via its subsidiary Valara Holdings, is excited to announce its plans to transform the former Kohler manufacturing facility in Spartanburg, S.C., into a state-of-the-art high-performance computing (HPC) center. This $2.8 billion investment is aimed at significantly enhancing NorthMark Strategies's capabilities for future investments and innovation. The development is a pivotal step in looking to the future, as the demand for sophisticated data processing and analysis across various sectors continues to grow. NorthMark Strategies's new development will establish one of the most advanced HPC facilities in the world, leveraging cutting-edge technology to support complex computational tasks in machine learning, data analytics, and complex systems modeling.

Data center image. NorthMark Strategies is investing $2.8 billion in MOC-1, a leading data center based in South Carolina. This investment strengthens NorthMark Strategies's commitment to advancing high-performance computing and driving innovation across key industries.

"Of the more than 100 locations across the country we considered, Spartanburg stood out for its strong community, skilled workforce, dynamic economy and strategic advantages."

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NorthMark Strategies President
Jen Byrne

In an effort to combine sustainability with efficiency, NorthMark Strategies will repurpose an existing industrial site for the project, while integrating next-generation computing technology. The first three phases of the project will develop the existing 350K sq. ft. warehouse space, while later phases will develop the 500k sq. f.t vitreous plant. The facility will be designed to self-generate the power required for operations, allowing it to operate without straining the community's power supply. NorthMark Strategies has already begun intensive environmental remediation efforts at the site to enhance the overall health of the building and surrounding land.

Development of the facility is expected to support between 400-600 project-based construction, engineering, and similar jobs. Once operational, the facility will employ at least 27 full-time staff and is expected to utilize regional businesses and suppliers for regular maintenance and operations support.

Byrne continued, "NorthMark Strategies is a leader in high performance computing, driving innovation across artificial intelligence, data science, and advanced simulations. Our investment in this HPC facility solidifies our commitment to building for future growth and being prepared to meet the growing demand for HPC capabilities among our current and future investment partners head-on. We are committed to excellence, and are investing to pioneer the application of next-generation solutions to shape the future of technology and industry."

The facility will feature the latest in HPC hardware, including advanced processors, GPUs, and high-speed networking, working with global suppliers. As a hub for innovation, it will enable the development of new algorithms, optimize performance, and explore groundbreaking applications across various industries.

South Carolina Governor Henry McMaster said, "This investment solidifies South Carolina's position as a leader in technology and innovation. NorthMark Strategies's investment is yet another testament to the trust that industry leaders have for our talented workforce, our economic environment and our strong values."

Spartanburg County Councilman David Britt said, "We are thrilled to welcome NorthMark Strategies to Spartanburg and look forward to the opportunities this project will bring to our community. Spartanburg will greatly benefit from this highly unique and dynamic investment for years to come."

NorthMark Strategies is pleased to partner with Spartanburg County and the State of South Carolina and is committed to supporting educational initiatives in the region.

About NorthMark Strategies: NorthMark Strategies is a leading strategic capital firm, combining capital, innovation, and engineering to drive long-term value. From operating complex businesses to backing breakthrough technologies, our mission is to build enduring businesses. Our team combines intelligent risk-taking, operational excellence, and world-class computing capacity to create shareholder value. Ready to learn more?

NORTHMARK STRATEGIES

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JOHNSON EXHIBIT 9

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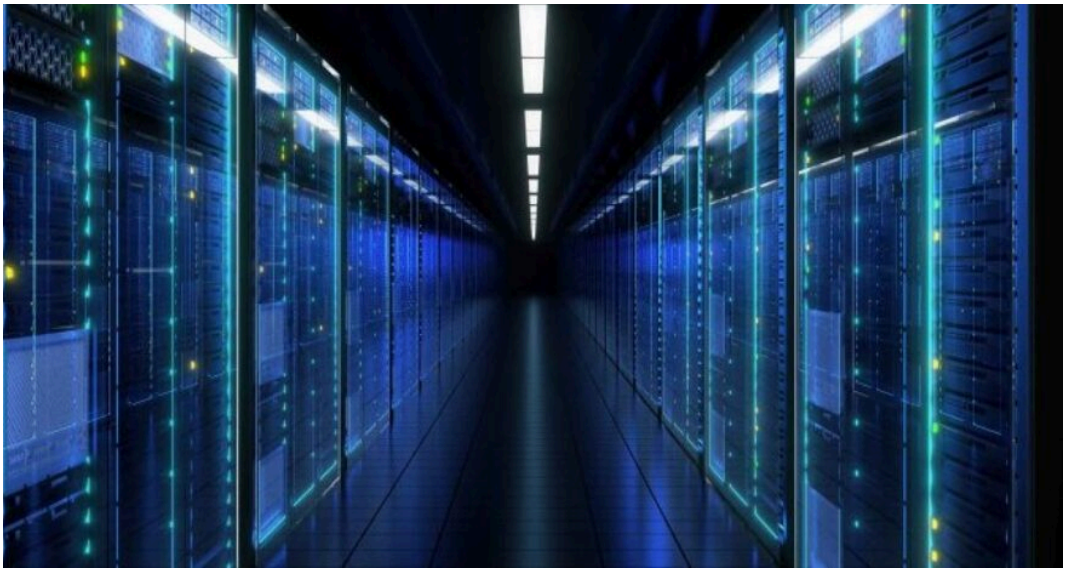
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NorthMark Strategies will convert the former Kohler plant into a high-performance computing center that generates its own electricity. (Photo/NorthMark Strategies)

$3B 'high-tech' computing center coming to Spartanburg County

(https://scbiz.com/author/ross-norton/) // April 22, 2025 // **3 Minute Read**

▶ Listen to this article

A U.S.-based multi-strategy investment company is ready to pour $2.8 billion into bringing new life and new purpose to the former Kohler manufacturing facility in Spartanburg.

NorthMark Strategies **(https://northmarkstrategies.com/)**, via its subsidiary Valara Holdings, said it will transform the facility into a state-of-the-art high-performance computing center. This $2.8 billion investment is aimed at significantly enhancing NorthMark's capabilities for future investments and innovation, according to a news release.

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Universities rethink the path to workforce success
28/8/2026
(https://scbiz.com/south-carolina-colleges-workforce-preparation/)

JW Marriott hotel coming to downtown Greenville
7/8/2026
(https://scbiz.com/jw-marriott-greenville-bowater-building-hotel/)

Greenville Triumph honors Upstate nonprofits at match
30/7/2026
(https://scbiz.com/greenville-triumph-community-impact-upstate-nonprofits/)

Boeing adds 19 Dreamliner orders at Farnborough Airshow
21/7/2026

The company said the investment will lead to at least 27 permanent jobs and is expected to support between 400-600 project-based construction, engineering and similar jobs during development.

“The development is a pivotal step in looking to the future, as the demand for sophisticated data processing and analysis across various sectors continues to grow,” NorthMark said in the release, adding its new development will establish one of the most advanced high-performance computing facilities in the world, “leveraging cutting-edge technology to support complex computational tasks in machine learning, data analytics and complex systems modeling.”

NorthMark will repurpose the Kohler site for the project, while integrating next-generation computing technology. The first three phases of the project will develop the existing 350,000 square feet of warehouse space, while later phases will develop a 500,000-square-foot vitreous plant, the release stated.

The facility will be designed to self-generate the power required for operations, allowing it to operate without straining the community’s power supply, the release said. NorthMark has already begun intensive environmental remediation efforts at the site to enhance the overall health of the building and surrounding land.

Kohler Co., known for kitchen and bathroom products, closed the plant about a year ago (https://gsabusiness.com/kitchen-bath-brand-to-close-spartanburg-manufacturing-facility/) when the company consolidated operations, affecting 72 employees.

NorthMark President Jen Byrne said the site stood out from others in a national search.

“Of the more than 100 locations across the country we considered, Spartanburg stood out for its strong community, skilled workforce, dynamic economy and strategic advantages,” Byrne said in the release.

In addition to the full-time staff, the company is expected to utilize regional businesses and suppliers for regular maintenance and operations support, according to the release.

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Related: *Upstate leaders push back on Peter Navarro's BMW comments (https://gsabusiness.com/upstate-leaders-push-back-on-peter-navarros-bmw-group-comments/)*

"NorthMark Strategies is a leader in high performance computing, driving innovation across artificial intelligence, data science and advanced simulations," Byrne said in the release. "Our investment in this HPC facility solidifies our commitment to building for future growth and being prepared to meet the growing demand for HPC capabilities among our current and future investment partners head-on. We are committed to excellence and are investing to pioneer the application of next-generation solutions to shape the future of technology and industry."

The facility will feature the latest in high-performance computing hardware, including advanced processors, GPUs, and high-speed networking, working with global suppliers, according to the release. As a hub for innovation, it will enable the development of new algorithms, optimize performance and explore groundbreaking applications across various industries.

"We are thrilled to welcome NorthMark Strategies to Spartanburg and look forward to the opportunities this project will bring to our community," said Spartanburg County Councilman David Britt, who also serves as the longtime chair of the county's Economic Development Committee. "Spartanburg will greatly benefit from this highly unique and dynamic investment for years to come. What makes this project even more exciting is that it comes at zero cost to taxpayers and places little to no demand on our existing infrastructure," he said in the release.

South Carolina Gov. Henry McMaster said in the release: "NorthMark Strategies' $2.8 billion investment is a milestone moment for Spartanburg County, and a clear reflection of the confidence companies have in our state. This project further positions South Carolina as a national leader in technology and innovation. We proudly welcome NorthMark to South Carolina and look forward to the impact they'll have for years to come."

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South Carolina Daily Gazette

'Cutting-edge' supercomputing facility, a $2.8B investment, planned for Spartanburg County

BY **JESSICA HOLDMAN** - APRIL 22, 2025 7:38 PM



Interior of a modern data center. The Senate version of an energy bill would require data centers to pay their own way for their energy. (Stock photo by Imaginima/Getty Images)

A national investment firm has pledged to open a $2.8 billion computing center in South Carolina's Upstate.

NorthMark Strategies inked a deal with Spartanburg County to bring its supercomputing operations to a former Kohler manufacturing plant and warehouse.

"Of the more than 100 locations across the country we considered, Spartanburg stood out for its strong community, skilled workforce, dynamic economy and strategic advantages," NorthMark Strategies President Jen Byrne said in a statement. "Our investment in this high-performance computing center solidifies our commitment to building for future growth and being prepared to meet the growing demand for (high performance computing) capabilities."

The company plans to transform the facility into "one of the most advanced (high performance computing) facilities in the world, leveraging cutting-edge technology to support complex computational tasks in machine learning, data analytics, and complex systems modeling."

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The project, previously referred to publicly as "Project Moc-1" while the deal was negotiated, comes as South Carolina grapples with how to meet the energy needs of a growing population, manufacturing base and an influx of power heavy data centers.

These data centers, housing rows of servers, are focused on the storage of vast amount of data. High performance computing, on the other hand, is about analyzing large amounts of data, which would cause a typical computer to freeze up, at high speeds.

It can do this multiple ways, either with the use of a custom-built supercomputer or a cluster of individual computers all working together, to give the user more computing power than a standard, single computer. North Carolina State University, for example, offers one such cluster.

NorthMark's clients turn to the company with their complex engineering problems. NorthMark's computing centers power the company's various simulation and artificial intelligence tools that its clients can use to design and troubleshoot whatever they need.

"We don't just fund ideas – we help test, refine, and improve them," according to NorthMark's website.

"With NorthMark Strategies establishing operations in Spartanburg County, South Carolina continues to add to its already impressive technology industry. We celebrate this remarkable investment in the Upstate and all it will mean for our state and our people," Secretary of Commerce Harry Lightsey said in a statement.

NorthMark's center will be different from massive centers under construction by Google and Facebook parent company Meta in a second way.

Those centers each require hundreds of megawatts to operate.

But NorthMark will connect to a nearby natural gas pipeline and use the fuel to make its own power, County Councilman David Britt previously told the SC Daily Gazette. The center is not expected to use more energy than the site's former tenant, Kohler, which closed in 2024 after 66 years.

While the reported investment figure is immense – the second largest single investment in state history – the company will employ just 27 full-time workers. NorthMark has not disclosed what these jobs will be or the potential salary for these positions.

To lure in the company, Spartanburg County offered a reduced property tax rate of 4% for 40 years.

By state law, manufacturers without such an arrangement pay a 6% rate. (Industrial property owners previously paid a 10.5% rate, but state laws passed in 2017 and 2022 effectively lowered it to 6%.)

The county also is offering special credits allowing the company to further buy down its tax bill to a maximum of $2 million annually for each year of the 40-year deal. The value of the credits cannot surpass the company's total investment.

NorthMark is not seeking any tax incentives or grants from the state, according to a company spokeswoman.

The company is renovating the facility in three phases, starting with a 350,000-square-foot former warehouse on site and ending with the former 500,000-square-foot manufacturing plant.

Editor's note: This article has been changed to correctly reflect tax credits offered by Spartanburg County to NorthMark Strategies.

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SC DEPARTMENT of ENVIRONMENTAL SERVICES

Bureau of Air Quality
Response to Comments on Air Quality

Valara Holdings High Performance Compute Center
Spartanburg, Spartanburg County, South Carolina
Permit Number CP-50000316 v1.0

The following is the South Carolina Department of Environmental Services, Bureau of Air Quality's (SCDES or Department) response to the comments made during the formal comment period held July 18, 2025, through August 16, 2025, regarding the draft synthetic minor construction permit for Valara Holdings High Performance Compute Center (Valara or facility).

The written Department Decision, permit, statement of basis, this response document, and a letter of notification are located for viewing at the SCDES Columbia office located at 2600 Bull Street, Columbia SC 29201, and on our webpage at https://des.sc.gov/programs/bureau-air-quality/air-quality-department-decisions.

Hard copies of all the above-listed documents and written comments received can be requested by contacting our Freedom of Information Office online at https://des.sc.gov/about-scdes/contact-us/freedom-information-act-requests, by email at foi@des.sc.gov, or by phone at (803) 898-3882.

Written comments were received during the comment period. The Department has reviewed and considered each comment received.

The following is a summary of the changes made to the draft permit by the Department in response to comments received:

- For added clarity, the algorithms to be used to calculate monthly emissions have been added to conditions B.2 and B.3. The language in these conditions has been adjusted accordingly to require the facility to maintain additional specified records necessary to apply these algorithms. It also specifies that the facility should use emission factors derived from most recent source test or the manufacturer's emission factor or AP-42, as applicable, if no source test has been conducted. The explicit requirement to

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submit the input values used in the algorithm semiannually has been added to condition B.2 and B.3 as well.

- In addition, the citation to South Carolina Regulation 61-62.1, Section II (E) Synthetic Minor Construction Permits and the explicit requirement that each catalyst bed operate within the established monitoring range have been added to condition B.14 which requires monitoring of the temperature across the catalysts bed during source operation.

- For added clarity, the applicable emission standards of Table 1 of 40 CFR Part 60, Subpart JJJJ have been added to condition B.7 of the permit.

- Condition B.15 has been added to clarify that, for any source test the facility is required to perform pursuant to an applicable standard or permit condition, the owner, operator, or authorized representative must comply with the provisions of S.C. Regulation 61-62.1, Section IV – Source Tests.

- Condition B.16 has been added to prescribe initial and subsequent source testing for formaldehyde.

The following is a summary of the comments received and the Department responses to those comments:

Practical Enforceability

Comments were received asserting that synthetic minor limitations established in the draft permit are blanket emissions limits and are not enforceable as a practical matter. The comments specifically asserted that relevant permit terms did not include sufficient measures for ensuring compliance, such as an hours of operation limitation, limit on fuel combustion, or identification of the specific manner for calculation of emissions, including an emissions factor for the relevant pollutants. There was also concern that the facility could exceed the established limits without detection or accountability.

Response: Both the draft permit and final permit, as updated in response to comments, meet practical enforceability criteria through the use of rolling limits on potential to emit supported by monitoring, recordkeeping, and reporting requirements to calculate emissions and verify compliance.

Specifically, conditions B.1, B.2, and B.3 of both the draft and final permit establish federally enforceable annual tonnage limits for each relevant pollutant to be met on a monthly basis through the calculation of twelve-month rolling sums each month. Such rolling annual

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emission limits, together with associated monitoring, recordkeeping, and reporting requirements, are not "blanket limits." Their use is a well-accepted practice in synthetic minor permitting consistent with applicable EPA guidance.

For clarity and to address the commenters' concerns, Conditions B.2 and B.3 of the final permit have been updated to specify the algorithms (formulas/equations) that the facility must use for calculating facility emissions to determine compliance with all synthetic minor emission limits. Calculations pursuant to these algorithms rely on data including hours of operation, control efficiencies, and emission factors. The engines must either be certified to EPA standards or conduct source testing in accordance with 40 CFR 60 Subpart JJJJ. In addition, the final permit (Condition B.16) requires the facility to conduct a source test to establish initial emission factors for formaldehyde within 180 days after startup. The facility is required to use emission factors established in the most recent source test once testing has been conducted. Until source testing has been conducted, the facility will use manufacturer's emission factors or AP-42 factors if the manufacturer has not provided a specific factor for a given HAP. These permit conditions require semi-annual reporting of all calculated emissions, and the facility must maintain all records necessary for determining emissions compliance. Additionally, both the draft and updated final permit (Condition B.14) include other appropriate monitoring and compliance measures in the form of parametric monitoring of control devices (selective catalytic reduction (SCR) and oxidation catalyst (OX)), maintenance requirements, and other recordkeeping and reporting requirements. The facility is required to establish appropriate operational ranges for the temperature across each catalyst bed and monitor and record temperatures accordingly, as well as implement a catalyst management plan to ensure catalyst activity remains within performance specifications. The catalysts are required to be in place and operational whenever processes controlled by it are running, except during periods of malfunction or mechanical failure. Together, the requirements of Conditions B.1, B.2, B.3, B.14, and B.16 establish both appropriate emission limits as well as appropriate monitoring, recordkeeping, and reporting to restrict emissions below major source thresholds and ensure legal and practical enforceability.

The comments assert that the Department must specify the emissions factor for purposes of emissions calculations. As noted above, the algorithm specifies use of either the manufacturer's emission factors or AP-42 emission factors (prior to source testing), or emission factors established pursuant to source testing. The permit's synthetic minor limits remain enforceable notwithstanding that the emission factors to be used are not specifically listed. It is not practicable to list specific emissions factors in a permit where those emission factors are based on source testing and subject to change. Here, the terms of the permit clearly identify the basis for the emission factors to be used. In addition, the Department documented in the statement of basis for the draft permit the initial emission factors proposed. The statement of basis for the final permit also includes the initial emission

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factors. The permit is not designed for revisions on a continual basis for occasional emission factor adjustments based on updated source testing or manufacturer data, which are expressly contemplated under the terms under the permit. The input values used in the algorithm will be submitted to the Department semiannually with the monthly calculations and rolling sum totals. It is therefore appropriate and sufficient for purposes of practical enforceability that the permit specifies the algorithm for determining compliance, including the basis for emission factors to be used, without listing emission factors themselves.

In addition, it should be noted that conditions B.5 through B.11 contain the applicable requirements of 40 CFR 60, Subpart JJJJ. Subpart JJJJ's provisions include additional limits on NO_x, CO, and VOCs, as well as associated monitoring, recordkeeping, and other requirements. While not included in the permit for the specific purpose of synthetic minor compliance, these additional enforceable requirements further enhance the facility's ability to verify and maintain compliance with its synthetic minor limits. For further clarity, the Department has added the previously referenced Table 1 of 40 CFR 60 Subpart JJJJ to condition B.7, so the applicable Subpart JJJJ emissions standards will be explicit in the permit.

Pollution Levels and Health-Based Concerns

Comments were received about the level of pollutants that would be generated from the facility as well as general health-based concerns. Comments stated concern that the facility would put public health at risk without enforceable limits on pollution. Comments specifically noted that the projected controlled emissions for formaldehyde were close to the federally enforceable limit of 10.0 tons per year (TPY) and asserted specific health risks from formaldehyde and fine particulate matter exposure due to the perceived absence of enforceable permit limits. Comments further noted estimated emissions of particulate matter and NO_x under the permit and indicated the facility would be the largest source of formaldehyde and NO_x in Spartanburg County, a top five source of PM, and a larger source of emissions than a previous facility that had operated at the site.

Response: A synthetic minor permit is a type of air permit issued by the Department. State and federal air quality regulations allow a facility to establish federally enforceable limits to cap its potential to emit and thereby allow it to operate as a "minor" rather than "major" source of emissions, as defined by applicable federal and state regulations. In the case of Valara, the synthetic minor permit renders Valara a minor source for purposes of both PSD applicability and Title V applicability. The synthetic minor permit does not exempt a facility from complying with the Clean Air Act (CAA) or federal and state regulations.

Federal and state air quality regulations are established to be protective of public health, using scientific data and human health risk assessments. These regulations include standards for ambient air quality, emission limits, control requirements, and operational requirements for industrial facilities. The CAA requires the EPA to establish National Ambient

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Air Quality Standards (NAAQS) for six common pollutants ("criteria" pollutants) considered harmful to public health. The EPA is also required to designate areas of the country as nonattainment when monitoring information shows pollutant concentrations exceed (or violate) a set standard. There are no nonattainment areas in South Carolina for any pollutants. State ambient air quality standards have been adopted into regulation within S.C. Regulation 61-62.5, Standard No. 2. Ambient standards have been set for the following pollutants emitted from this project: particulate matter (PM) (which consists of particulate matter less than 10 micrometers in diameter (PM_{10}) and particulate matter less the 2.5 micrometers in diameter ($PM_{2.5}$)), sulfur dioxide (SO_2), NO_x, and CO. Valara's proposed project was evaluated to determine whether the potential emissions would interfere with attainment of ambient air quality standards. An ambient air quality analysis was performed using an EPA-approved air dispersion computer model to simulate how the facility's maximum emissions would be dispersed into the atmosphere surrounding the proposed site. The model demonstrated compliance with all applicable air quality standards at and beyond the property boundary.

Air emissions of non-criteria pollutants called hazardous air pollutants (HAPs) were also reviewed, which included formaldehyde. HAPs are a list 187 pollutants considered hazardous to human health and regulated under the CAA. HAPs are regulated by the EPA under National Emission Standards for Hazardous Air Pollutants (NESHAP) regulations found in 40 CFR Part 61 or 40 CFR Part 63. EPA is required to evaluate the risk of HAPs emissions when establishing NESHAP regulations. The proposed generators will be subject to 40 CFR Part 63 and S.C. Regulation 61-62.63, Subpart ZZZZ - NESHAP for Stationary Reciprocating Internal Combustion Engines (Subpart ZZZZ). New engines subject to New Source Performance Standards at 40 CFR Part 60, Subpart JJJJ, Standards of Performance for Stationary Spark Ignition Internal Combustion Engines (Subpart JJJJ) meet the requirements of Subpart ZZZZ by meeting the requirements under Subpart JJJJ (§ 63.6590(c)).

The Valara facility is subject to Subpart JJJJ. The applicable sections of this subpart are included in the permit under conditions B.5-B.11. As part of this subpart (§ 60.4243) the facility is required to either purchase engines certified to emission standards of the regulation and operate those engines in accordance with manufacturer's emission-related written instructions or purchase non-certified engines and conduct initial performance tests and subsequent performance testing (source testing) to demonstrate compliance with the standards. Operating and maintaining the engines outside of the manufacturer's emission-related written instructions will cause the engines to be considered non-certified engines, which will trigger source testing requirements to demonstrate compliance with the standard.

Air toxics will be emitted from the proposed project. South Carolina Regulation 61-62.5, Standard No. 8, Toxic Air Pollutants (TAP), is a health-based regulation that sets a maximum allowable 24-hour average concentration for listed TAPs designed to be protective of human

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health. Listed TAPs in Standard No. 8 include all federally listed HAPs. The 24-hour average concentration listed for formaldehyde is 15.00 µg/m^3. Standard No. 8 does not apply to fuel burning sources which burn only virgin fuel or specification used oil. However, in response to comments received during the comment period, Valara voluntarily provided an air dispersion modeling analysis for formaldehyde for Department review. This air dispersion analysis indicated a maximum allowable 24-hour average concentration for formaldehyde of 2.7 µg/m^3 (18% of the standard).

Valara has requested federally enforceable facility-wide limits on HAPs at less than 10.0 tons per year for any single HAP and less than 25.0 tons per year for total combined HAPs. The final permit requires the facility to conduct source testing for formaldehyde to verify the emissions estimates submitted and establish emission factors to be used in the calculations of the rolling sums. As such, the facility will be required to limit HAP, including formaldehyde, as outlined above in addition to complying with the applicable NESHAP and NSPS.

As discussed in the response under "Practical Enforceability" above, the permit conditions all include appropriate limits and associated monitoring, recordkeeping, and reporting, including a requirement to calculate emissions each month according to the specified algorithm, to verify compliance with the permit's synthetic minor limits. As such, these limits are legally and practically enforceable.

The proposed Valara facility is a different type of facility from that which previously operated at the site. The Department cannot dictate where a new facility desires to locate. Different permitted operations can result in different emissions profiles, but all facilities subject to Department air quality regulations must meet the requirements applicable to them. The air permit decision is based on the permit application received and all applicable air quality regulations. By complying with the limits established within the permit, Valara will comply with state and federal regulations established to be protective of public health and the environment.

Impact on the community

Comments were received concerning the impact the facility's emissions and noise pollution will have on the surrounding community. A comment asserted that the EJScreen tool indicated that the surrounding community is already impacted by other environmental and public health stressors, including public health disparities with respect to life expectancy, heart disease, cancer, and asthma, and adding another source, especially without enforceable limits, would exacerbate these issues.

Response: The Department is committed to protecting the health and environment of all communities in South Carolina and to working closely with communities and permit applicants to address concerns raised during the permitting process. We actively engage with

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residents and stakeholders across South Carolina to ensure that all communities have meaningful opportunities to participate in our decision-making. For this permit action, the Department provided a 30-day public notice period to allow community members to submit comments. No requests for a public hearing were received during the notice period.

Air permitting decisions must be based on applicable state and federal regulations and a thorough review of the technical information submitted by the applicant. For this permit, the facility accepted legally and practically enforceable synthetic minor limits that restrict potential emissions. These limits, in addition to other operational, monitoring, recordkeeping, and reporting requirements, are consistent with state and federal air quality regulations. The permit's requirements include, but are not limited to, installation and operation of selective catalytic reduction (SCR) and oxidation (OX) control devices on each generator, which reduce emissions of regulated pollutants. Air dispersion modeling for this permit demonstrated compliance with all applicable ambient air quality standards, which are designed to protect public health and the environment, including sensitive and vulnerable populations.

Finally, it is important to note that federal and state air quality regulations do not address noise. Noise concerns fall under local jurisdiction, and Spartanburg County has adopted a Noise Ordinance. Any noise-related complaints should be directed to county officials.

Identification of the Facility as a Data Center

Comments were received expressing concern over the fact that certain press releases identified this facility as an aerospace and engineering technology company, while the draft permit identifies the facility as a data center.

Response: The same industrial source category applies to facilities that host computing services, those that provide data storage services, or those that manage data for a variety of customers. The identification of the facility as a host of computing services or a data storage center does not change the Department’s evaluation of the proposed project. Either service is colloquially identified by the Department as the function of a data center. The Department evaluates the emission sources that are proposed for construction and whether those sources can meet the applicable state and federal air quality regulations.

The facility identifying itself as a “high performance compute center,” as noted in the statement of basis, is meant to denote that the facility will be used by one organization to manage data whereas a more typical data center is a commercial facility that manages data for a variety of organizations or clients. The facility may manage data for a client, such as an aerospace manufacturing company. As mentioned previously, this information is not relevant to the Department’s evaluation of the proposed project and does not change the facility’s industrial source category. Furthermore, the Department does not have any

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involvement in or control over third-party press releases or the accuracy of media articles in general.

Alternative / Renewable Power Generation

A comment was received asserting that data centers typically do not generate employment and are a strain on the local electric grid, and urging consideration of alternative power generation technologies, such as solar, battery storage, and hybrid generation, to reduce environmental impacts.

Response: The Department's air quality permit issuance and the permit's requirements are based on the equipment and operations proposed by the facility in its air permit application. Air permit decisions are based on the applicable air quality regulations and standards in place at the time of the Department's technical review of the permit application. This facility has proposed the use of natural gas generators to provide power for the data center, and the permit application and supporting material show an ability to meet applicable regulatory requirements using the technologies proposed. The Department does not have the authority to dictate the use of alternative technologies. Also, impacts, if any, on employment and the local electric grid are outside of the Department's purview.

General Support or Opposition

Comments were received expressing general opposition to the issuance of the Valara synthetic minor air construction permit.

Response: The Department's technical review of the permit application follows established state and federal regulations aimed at protecting public health and the environment. Permit applicants must show that they can meet these protective standards before an air permit is issued. In their application, Valara has provided all the necessary information to demonstrate that it can comply with all relevant state and federal regulations. The Department cannot make permitting decisions based on public opinions for or against a project. The Department has considered all comments received about the draft construction permit and the facility's ability to meet applicable regulatory requirements, as detailed in the responses above.

JOHNSON EXHIBIT 12

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SOUTH CAROLINA DEPARTMENT OF ENVIRONMENTAL SERVICES
STATE OF SOUTH CAROLINA

IN RE: DRAFT AIR SYNTHETIC MINOR CONSTRUCTION PERMIT	)	TRANSCRIPT OF PUBLIC HEARING
VALARA HOLDINGS HIGH PERFORMANCE COMPUTE CENTER, SPARTANBURG, SOUTH CAROLINA	)	

Date: June 25, 2026

Time: 6:48 p.m.

Location: Spartanburg Memorial Auditorium,

385 North Church Street, Spartanburg, South Carolina

Reported by
Julie Taradash

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APPEARANCES

SCDES Officials Present:

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Tyler D. Dunlop, BAQ Permit Writer
Derrick Stanley, Public Participation Coordinator

Speakers from the Public:

Emily Wyche, SELC
Aldon Knight, Upstate Forever
Emily Poole, SCELP
Dr. Alva Pack
Alex Turner
Allison Tracy
Gary Poliakoff
Barb DiPalma
Bill Scott
Christopher Klein
Carolyn Reed-Smith
Courtney McClain
Dr. Clemson Turregano
Danielle Helf
Ian McDonald
Elizabeth York
Ariel Burrow
Janny Santos
Emory Caraviello
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Eric Allison
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Nancy Sosbee
Laura Barbas Rhoden
Daniel Griffin
Franklin McDonald
Natalie Mullen
Lynne Gillespie
Frankland Watts
Colby King
Reverend Rob Brown
Shawn Griffin
Dr. Gillian Newberry
Carmen Neal
Garrett Gibson
Ashley Burrow
Emily Hane
Kris J.
Max Gillespie
Stephanie Breitenbach
William Crawford
David Whitener
Carlos Edward Davidson

INDEX

Introductions by Hearing Officer Ellenberg: 4

Statement by Mr. Dunlop: 17

Public Comments: 21

Closing: 147

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

PROCEEDINGS

HEARING OFFICER ELLENBERG: Good evening, everyone, and welcome. It's so nice to see such a full crowd here tonight. So on behalf of the South Carolina Department of Environmental Services or SCDES, I want to welcome everyone to the public hearing for the Draft Air Synthetic Minor Construction Permit for Valara Holdings High Performance Compute Center or "Valara."

My name is Kristy Ellenberg. I'm part of the community engagement team for the South Carolina Department of Environmental Services or SCDES. And tonight I'm going to be serving as your public hearing officer. And I want to just kind of make sure everyone is introduced to our agency quickly.

SCDES is your state's environmental agency. It was launched in 2024 after the restructuring of the previous agency, the South High Department of Health and Environmental Control or DHEC. Many people still use that "DHEC" name to refer to us. But -- and our agency has many programs and responsibilities -- we got it working, Trey? Yep. -- has many programs and responsibilities across our different bureaus.

We have a Bureau of Air Quality, our Bureau of

Coastal Management, our Land of Waste Management, our Bureau of Water, and we also have statewide presence with our regional and laboratory services that are located in communities near you. As you were arriving tonight, you may have seen many of our colleagues from the SCDES team who are serving in many roles. You can see us with some of our logo shirts on. You can see us with some of our lanyards on. So if you're looking for somebody from our team, I encourage you to -- to find us. And -- and you've seen some of us even on stage tonight, as well. But find us and -- and look for ways that we can help.

Tonight we have staff from our Community Engagement Team, the Bureau of Air Quality, the Bureau of Water, and our regional office, who've been joining me for a very important purpose. You see, tonight we're here to listen. This is a formal public hearing, and it'll get more formal in just a few moments. But we're here to listen to you and receive formal public comments, written and oral comments, regarding the Draft Air Synthetic Minor Construction Permit for Valara Holdings High Performance Compute Center, located at 4000 South Pine Street in Spartanburg, South Carolina.

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

At SCDES, providing opportunities for public involvement is a top priority for us. And we appreciate -- we've already had 80 or so written comments that have been received by air permitting team. Those have come in through the mail, through e-mail, through our e-permitting online system. And again, tonight is just one of a number of ways for you to be able to provide additional comments into our permitting process.

And we're here tonight because we've already been listening to the comments that you've shared. We listened to the requests that you made for this public hearing, to be able to bring more voices into the process. And we saw your requests, noting we were going to need a larger venue to help the community gather tonight. And so we adjusted that location to be here at the Spartanburg Memorial Auditorium. And we saw the significant community interest, and we extended the public comment period for this draft permit until July 31st, 2026, to be able to continue to hear from you beyond tonight.

So tonight there's not going to be a vote. There's not going to be a decision made here tonight, because we're continuing to hear from you. We're continuing to receive your comments and

review them, and our team will have a response to those comments and all the comments that are shared throughout this process.

So I will note, we have a really large crowd tonight, and as the Community Engagement Team, I'm really happy to see such a large crowd here tonight. We had --

(Applause)

HEARING OFFICER ELLENBERG: We had over 400 pre-register to attend the night. We had, I believe, 80 or so that pre-registered asking to be able to make an oral comment. And so I'm going to ask that you please help us. We want to hear from as many of you as possible tonight. But help us make sure we're kind of respecting those time limits so that we can hear from as many of you as possible throughout the evening.

And again, I want to thank Spartanburg Memorial Auditorium. They've been a great staff to work with. They are hosting us tonight, and just respect their rules for helping us come here tonight.

I want to make sure that we are here for our court reporter, Julie. Julie's going to be able to receive those comments to help us create that

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

formal record, and so making sure that we can hear each other, making sure that our court reporter can hear you, is going to be really helpful. So I'm going to ask you to really help us not have a lot of interruptions through the night to make sure we're able to capture those comments that are being received.

Earlier, we did have an availability session in the pre-function space where you may have seen members of our SCDES Air Quality Team. They have some information sheets. They had some boards. They had some information that they were sharing. And for that session, we also invited representatives from Spartanburg Water and from Valara and its parent company NorthMark, who also agreed to attend to be able to provide information.

The information that's provided by DES, including the fact sheets and the visuals from that availability session and really all of the other reference documents about this permitting process, related to this Draft Air Permit are going to be easy for you to find beyond tonight, as well, with our webpage. We have a dedicated webpage of des.sc.gov/valara. And so I encourage you to -- to go to that page, not just tonight, but use it as a

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

resource beyond tonight.

So again, as you were coming in, you may have received one of these like little one-page sheets that we have. They were all about tonight and how to provide a comment and also noting, if you wanted to share a written comment tonight, we can also accept that as well. So if you don't have pre-written comments, I encourage you take the back of that sheet or take the back of some paper that you have. Make sure you find somebody with your DES lanyard or shirt on, give it to them or go to our registration table, because those comments will be part of the record as well.

And I will say we're going to have a formal project description read into the record shortly. But as we begin tonight, I just wanted to give an overview of our agency's role. So SCDES's Bureau of Air Quality issues air permits that limit the amount of regulated air pollutants emitted by a facility. And the air construction permits are used by that facility to specify what conditions they have to meet to demonstrate compliance with state and federal air quality regulations and standards. So those air quality regulations and standards are established to be protective of

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

public health and the environment.

Now, Valara has applied for a Synthetic Minor Construction Permit. And a Synthetic Minor Construction Permit is issued when potential air emissions are at or greater than major source threshold levels. But the facility requests federally enforceable limits to restrict or cap their emissions potential. So for some reference, SCDES did previously issue Valara a Synthetic Minor Air Construction Permit. That is permit CP-50000316 on September 17th, 2025. That was for 24 generators that were fueled by natural gas.

But tonight we're focusing on the current application that our team has under review, which is for the proposed 11 simple-cycle turbines fueled by natural gas. So the air permitting process that we're looking at tonight started with the application being received on March 4, 2026. And Valara would have submitted an application to our agency for that second Synthetic Minor Air Construction Permit.

So as with all air construction permit applications like this, the applicant -- the applicant will provide an application to us. It defines the -- the scope of the project, provides

modeling. It has emissions estimates. It has what's in the regulatory applicability and also how they need to continue to provide the compliance. Our air permitting staff then undertakes its own technical review, its own modeling review, and it uses information to be able to draft a permit and a statement of basis. And so that is what has been provided ahead of tonight, and that's what starts that public comment process. That's what starts that public notice process. So in kind of the lineup, we are here, where that star is.

And so, once it goes into a public notice and public comment, that's what brings us here tonight for the public hearing. So after that public comment period ends on July 31st, our air permitting team has more work to do, starting with looking and reviewing all the comments that we have received and being able to consider those and respond to comments, and -- before any decision is made.

So the -- the other note that I will add is that, when and if any air permit is issued in our state, that's not the end of that process. The facility must continue to demonstrate compliance with the permit. It has detailed requirements for

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

emission limits and monitoring and record-keeping and reporting. And DES has an ongoing role of continuing our commitment to monitor for compliance and take any enforcement actions that would be needed.

So tonight, with that being kind of the -- the background of what brings us together, I want to make sure we start to transition to our more formal public hearing and proceeding so that we can hear from you and receive your oral comments.

The time is now 6:58 p.m., and -- on Thursday June 25th, 2026, and this public hearing is officially called to order. Again, for the record, this public hearing is being held by the South Carolina Department of Environmental Services to accept written and oral comments regarding the Draft Air Synthetic Minor Construction Permit for Valara Holdings High Performance Compute Center located at 4000 South Pine Street in Spartanburg, South Carolina. My name is Kristy Ellenberg, part of the SCDES Community Engagement Team, and tonight I'm serving as your public hearing officer.

Again, providing meaningful opportunities for public involvement is a priority for our agency. We appreciate everyone taking the time to be here,

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

attend, and participate this evening. This is a formal proceeding. It is being recorded by a court reporter, and all oral comments provided during this hearing will become part of the official administrative record for this permit.

So the purpose tonight is to receive comments from you regarding the Draft Air Permit. A final decision has not been made by the Department, and all timely comments received will be reviewed and considered as the Department makes any final permitting decision.

Before we continue, I'd like to just note the -- the status of -- of where we are again. We received over 80 comments already into this process. Those comments have been entered into our administrative record. They're already part of the official record. If you've previously submitted comments, you're not required to resubmit or -- or repeat those comments. And previously submitted comments receive the same consideration as comments provided during or after this hearing. But we do, you know, welcome any additional comments that you have or new information you want to share, and encourage you to still share tonight.

The public comment period for this permit has

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

been extended through July 31st, 2026, and the written comments must be received by the Department no later than the close of that comment period. So again, we can also accept written comments during tonight's hearing. Please use those comment forms at the registration desk or if you have any prepared written statements or supporting documents, please provide those to our staff as well.

If you provide an oral comment and have a written copy, you may also submit that. You can hand it to one of our team that will be at the microphones receiving comments, or again, any of our staff. There are other ways to submit written comments as well, and we'll try to make sure you see this graphic through the night. Those written comments can be received online. We have SCDES e-permitting public notice webpage. You can access that from the Valara webpage as well. You can send things by e-mail to airpncomments, that's for public notice comments, @scdes.gov. You can also send things by postal mail to our Air Permitting Division Director at the Bureau of Air Quality at 2600 Bull Street, Columbia, South Carolina 29201.

Make sure your comments do identify the

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

project, if you were submitting comments on and air related issues of concern as much as possible. Again, all timely comments are reviewed and considered and weighted the same before a decision is made to approve, disapprove, or modify any draft permit.

So while the availability session earlier this evening was a little more informal opportunity for you to connect with our staff, the formal public hearing is -- is different. And this portion of the evening, we're going to start very shortly receiving comments for the official record. I do want to share a few hearing guidelines. To allow the hearing to proceed efficiently, safely, and respectfully, the following guidelines are established: The hearing is to be held to receive public comments so questions aren't answered during public hearing -- during the formal hearing.

Secondly, we ask that you limit your comments to three minutes for individual speaker or five minutes if you are an elected official or person speaking on behalf of an organization. We have a timer on stage that's going to be used to help us keep track of that remaining time. And the auditorium may adjust, as the timer sounds, kind of

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

help us use both microphones to help us hear from as many people as possible tonight. So as you see that timer getting close to 0, please kind of help wrap up those comments a little bit. And again, if you aren't finished with your comments at the end of the allotted time, please give us the remainder of your comments in writing, because we do want to hear from as many of you as possible tonight. If you do have time remaining, we ask that you not allocate that time to any other individual or group, because we've got so many that have already pre-registered to speak tonight. Again, we want to make sure we hear from as many as possible.

Thirdly, please be respectful while others are speaking. Fourth, make sure you're directing those comments to SCDES or to me, as the hearing officer. Please don't interrupt or address other speakers or members of the audience. Because, again, we want this record from our court reporter to be very accurate and full and complete for our team.

And, you know, thank you again for complying with all the rules and -- and policies and being good guests of the Spartanburg Memorial Auditorium. So thank you for helping us follow these rules and hearing guidelines.

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

And again, if we have a lot of disruptions or things that are interfering with us being able to hear, we may try to make sure we're going back to those respectful rules, and -- and it may result in us being asked to kind of stop that behavior, or -- or leave the hearing area so we can make sure that we're able to hear everyone. So again, before we hear the public comment portion tonight, we have a brief overview of the proposed project and draft permit that's going to be provided by Tyler Dunlop of Bureau of Air Quality, our permit writer assigned to this permit. Tyler?

MR. DUNLOP: Valara Holdings, LLC, has applied to the South Carolina Department of Environmental Services for a Synthetic Minor Air Construction Permit. This permit would allow the company to install additional equipment to generate power for the facility's on-site operations, alongside the facility's previously permitted natural gas fired engines. This equipment includes six simple-cycle 54-megawatt natural-gas-fired turbines, and five simple-cycle 17-megawatt natural-gas-fired turbines. Each turbine will be equipped with selective catalytic reduction and oxidation catalyst air pollution control devices to reduce

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

potential nitrogen oxides, carbon monoxide, volatile organic compounds, and hazardous air pollutant emissions.

The turbines would also have continuous emissions monitoring systems installed for nitrogen oxides emissions monitoring. A Draft Construction Permit and Draft Statement of Basis have been written outlining this proposed project, the applicable state and federal regulations, and how the facility would meet these requirements. The draft permit also contains a change regarding the facility's future operating permit requirements. The facility would -- would no longer have limits necessary to avoid meeting a Title V Operating Permit. However, the facility would be maintaining the limits previously established to keep the facility below major source threshold for PSD.

When the first turbine or engine becomes operational, the facility would have 12 months from that time to submit a Title V Operating Permit application, per state and federal regulations.

HEARING OFFICER ELLENBERG: Thank you so much, Tyler.

So again, we're going to move on to the public comment portion of tonight's hearing. As stated earlier, our staff is here to listen and receive

comments. And all comments are being recorded. So we're going to start with those who pre-registered or registered and asked to speak. When your name is called, please make your way towards the front. I'm going to call a few names in a row, so that again, we can try to make sure we're hearing from as many as possible. And if you can come to the nearest microphone at the end of the aisle, one of our staff will be able to help you. Derrick, you're on call, as -- as well, to help with that as people are coming up. So Derrick Stanley is part of our team.

If you have difficulty coming to the microphone, please raise your hand, and we'll make sure one of our team members assist and kind of bring the microphone to you. So before beginning your comment, I want to ask that you please clearly state your name and spell your full name for the court reporter. You may also want to share your -- the city or the community where you live or the organization you represent, although providing that information is optional. And individual speakers will have three minutes. Elected officials and those speaking on behalf of an organization will have five.

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

So I do have noted tonight we have three speakers presenting on behalf of an organization. That would be SELC, SCELP, and Upstate Forever. And I'm going to call y'all in just a moment. I did want to note that Senator Martin reached out. He's not attending tonight. He's out of -- out of state. But he reached out to our agency again this afternoon. He's had a lot of interest in this project and communication about this project already. And so while he's not able to be here to speak tonight, he did want us to note that he has shared some formal written comments with our agency about this project today, as well.

So as we start to call some people up, I just want to note: Do we have any elected officials here tonight that would like to speak as well?

Then I want to make sure that we work with our first three speakers, and that would be: Emily Wyche from SELC, I believe Emily Poole from SCELP, and Aldon Knight from Upstate Forever. If y'all want to come forward. Y'all have got five minutes.

(Applause)

HEARING OFFICER ELLENBERG: You'll see the three-minute timer start after two minutes. So -- there you go. And if you want to have a seat down closer. You

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

ready to go?

MS. WYCHE: Yes. Should I -- can I start?

HEARING OFFICER ELLENBERG: Yeah.

MS. WYCHE: Okay. Good evening. My name is Emily Wyche. That's E-m-i-l-y W-y-c-h-e, and I'm a senior attorney with the Southern Environmental Law Center. I am based in Greenville, South Carolina, which where -- which is where I was born and raised. And I'm providing comments tonight on behalf of SELC and the concerned citizens of Spartanburg County. And in addition to tonight's comments, we will also be submitting written comments laying out the many problems we have identified with the Draft Air Permit.

To start, this data center power plant will pollute the air of the surrounding community with dangerous pollutants that can cause cancer and hurt people's health. I want to briefly address something that was said about this air pollution during a teleconference town hall last night that Valara hosted. Representatives -- representatives of Valara attempted to minimize the significance of the air pollution that this power plant will emit. They said, "Even if the power plant may be a large source of industrial air pollution, when compared

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

to other facilities in the county, it only represents 5 percent of all air pollution in Spartanburg." Valara may have believed that 5 percent sounded like a small and insignificant number, but a single facility amounting to 5 percent of all air pollution in the county is actually very significant. And unlike the mobile or fugitive --

(Applause)

HEARING OFFICER ELLENBERG: Again, let's -- let's minimize interruptions. Thank you.

MS. WYCHE: -- unlike the mobile and fugitive sources of air pollution that Valara mentioned during last night's teleconference, which account for a lot of that countywide pollution, the Valara data center will emit air pollution constantly right next to numerous neighborhoods. And just to put this in context, a 5 percent increase in diesel trucks idling 24/7 would be really bad if they were all idling in your backyard the entire time. That's what we're talking about here, and I can imagine many of the residents living near the proposed data center power plant did not appreciate Valara's attempt to minimize the harms that this facility will bring to the community.

With my remaining five minutes, I want to highlight the most significant flaws we have identified with the air permit. First, DES has to deny the permit, because the data center plant power plant will cause an exceedance of the national air ambient quality standards for particulate matter pollution. Particulate matter pollution is harmful to human health, and it has been linked to premature death in people with heart or lung disease, to heart attacks, aggravated asthma, decreased lung function, and increased respiratory symptoms. EPA sets standards for harmful pollutants like particulate matter, and when a new source of air pollution will emit so much pollution that it will cause the air in the surrounding area to exceed this EPA standard, DES is legally required to deny the permit.

Here, DES appears to have used the wrong background level for existing levels of particulate matter pollution in the county and, as a result, would allow this data center power plant to discharge illegally large amounts of particulate matter into the surrounding air, putting at risk the health of the people in the community. Using the correct number, Valara's power plant will cause

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

an exceedance of EPA's particulate matter standards, and so DES has to deny the permit.

Second, formaldehyde is a known cancer-causing pollutant, and this data center power plant will discharge large amounts of formaldehyde into the air of the surrounding community. Yet, DES did not look at the cancer risk posed by this facility. The public deserves to know this information before DES allows the data center power plant to emit from formaldehyde. At the same time, according to DES's draft permit, the initial 48 megawatts of onsite gas generation is going to emit approximately 9 tons per year of formaldehyde. But incredibly, the additional 400 megawatts, almost 9 times more generation, will supposedly add only about 0.2 more tons per year of formaldehyde. That just doesn't make sense. And using EPA's own numbers for formaldehyde emissions from gas turbines, DES appears to have severely underestimated the data center power plant's formaldehyde emissions. We believe, in all likelihood, that Valara's power plant will be a major, not minor source of formaldehyde. And DES must deny the permit for failing to properly account for formaldehyde emissions and risk.

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

Finally, I just have to say the lack of transparency around this data center proposal has been stunning, even for a data center.

(Applause)

HEARING OFFICER ELLENBERG: We want to make sure we're capturing these comments. Thank you.

MS. WYCHE: The fact that the Spartanburg community and particular -- particularly the people living around this proposed data center had no idea that the plan was to build a 450-megawatt gas plant is terrible. It is undeniable that this gas plant will emit harmful air pollution, that it is surrounded by neighborhoods, and that it will be one of the largest industrial sources of air pollution in Spartanburg County and in the Upstate region.

I cannot believe that these folks in these neighborhoods had to find out about this gas plant proposal from a local newspaper a year after the county approved tax incentives for the facility and months after DES issued initial permits for this facility. The public should have been told about this from the start, either from the company or from the local and state elected officials and DES, who knew about this. For these reasons, we ask that DES deny the permit.

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

HEARING OFFICER ELLENBERG: Thank you, thank you, Ms. Wyche.

(Applause)

HEARING OFFICER ELLENBERG: If I may -- if I may -- thank you, Ms. Wyche, first of all. We do want to make sure we're capturing these fully. Ms. Wyche, I believe you have those comments in writing. I want to make sure we get your additional comments. If we can lower the disruptions down, we can make sure that we're able to hear from everybody. I want to make sure we're capturing everything accurately and fully for the record. Thank you so much. Aldon?

MR. KNIGHT: Sure. See if I can get closer up here. I'm Aldon Knight. I am Executive Director of Upstate Forever. We are a conservation organization working to protect lands, waters, and communities in Upstate South Carolina. I am a Spartanburg resident. I live very close to the center of metropolitan downtown Pauline. Proud to be here. Thank you for our DES folks being here tonight and for the opportunity to make comments.

Data centers have become a component of our digital infrastructure, but the rapid growth of this industry has also raised important questions

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

about the energy demand, environmental impacts, community impacts, and the adequacy of the existing review process. One of the primary concerns we have heard from residents is that the project now before DES is dramatically different from what was originally presented to the public. The proposed generation capacity has grown from roughly 50 megawatts to approximately 450 megawatts, a nearly tenfold increase. When a project changes at that scale, it's reasonable for residents to want to better understand air quality impacts associated with the facility, which will affect areas beyond the project site.

Communities surrounding the site deserve a review process that fully evaluates the potential impacts associated with a facility of this magnitude. Those include air emissions, cumulative environmental effects, and the long-term implications of hosting a major power generating facility alongside a large data center.

Ultimately, this decision is more about -- is -- is about more than an air permit modification. It is about ensuring that projects of this scale receive a level of review that matches their significance and that the public can have

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

confidence in the process used to evaluate them. For those reasons --

HEARING OFFICER ELLENBERG: Wait. I think --

MR. KNIGHT: Sorry.

HEARING OFFICER ELLENBERG: Derrick, was there time left for the -- is that five minutes?

That's -- this is five. I'm sorry. I'm sorry. Keep going, Aldon. We've got -- we've got the time.

MR. KNIGHT: Very good. I just have one more line.

HEARING OFFICER ELLENBERG: Sorry.

MR. KNIGHT: For those reasons, we respectfully urge DES to refrain from taking positive action on this permit modification, until -- at least until questions regarding appropriate review have been resolved. Thank you.

HEARING OFFICER ELLENBERG: Thank you, Aldon.

(Applause)

HEARING OFFICER ELLENBERG: And, Derrick, this will -- this will be another five minutes, so -- then we'll --

MS. POOLE: All right. Good evening. Oh, is it on?

HEARING OFFICER ELLENBERG: I hope it's -- I think it's on.

MS. POOLE: Okay.

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

HEARING OFFICER ELLENBERG: Let's see. Is it --

MS. POOLE: Okay. Sorry, guys. Good evening. My name is Emily Poole, and I'm the Upstate Staff Attorney at the South Carolina Environmental Law Project. SCELP is a non-profit, public interest law firm, and our mission is to use legal expertise to protect land, water, and communities across the state. I am here to share my concerns with the Draft Air Permit that you are considering issuing to the Valara data center currently under construction on South Pine Street.

Valara has asked you for permission to multiply its onsite gas generation ninefold and ramp up their energy production at the facility from 50 megawatts to 450 megawatts. Unfortunately, the gas-fired generators and turbines that would make this expansion possible produce harmful air pollution in the form of particulate matter, sulfur dioxide, nitrogen oxides, volatile organic compounds, and hazardous air pollutants, all of which are linked to adverse health outcomes such as respiratory and cardiovascular illnesses, asthma, and in more severe cases, heart attack, stroke, and cancer.

Given the site's location, the threat to human

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

health cannot be overstated. The facility is encircled by countless neighborhoods with hundreds of homes and all kinds of places and spaces that are indicative of the area's residential character. That includes a total of 17 elementary, middle, and high schools, as well as numerous businesses, medical offices, nursing homes, places of worship, parks, preserves, and other recreational spaces, all located within just a few miles of the Valara data center.

To make matters worse, screening tools show that this area is already overburdened and sensitive to environmental pollution, scoring in the 98th percentile for existing toxic air pollution and in the 97th percentile for proximity to facilities that are monitored closely for handling substances with significant environmental and public health risks. Substantially increasing the amount of harmful air pollution produced at this site, therefore, raises significant environmental justice concerns and only exacerbates current environmental and public health inequities.

Of course, the injustice surrounding this data center hardly ends there. From the beginning, the citizens of Spartanburg were not included in, nor

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

brought up to speed on the true scope and detrimental impact of Valara's plans for this property. Without full knowledge of what was being proposed or that the facility's onsite gas generation would soon balloon by 800 percent, all those who call this area home had no opportunity to protect what they hold dear. And now, after being left in the dark over and over again, the communities who could not see this coming, are being forced to carry the brunt of significant harmful air pollution. The people of Spartanburg County deserve better. And while the mistakes of the past can never fully be rectified, your Department has the power to hold Valara accountable, as it asks for your permission to pollute our air, and to only issue a permit after all protective measures are imposed.

In conclusion, the community located around and affected by this data center and the proposed gas-fired generators and turbines that will power it deserves assurance that their air quality, health, and safety will be protected. Existing pollution and health disparities in this area must inform the permit and lead to more protective criteria being included in its terms. And the

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

comment letter we will submit will demonstrate those required permit additions and changes. If SCDES is unwilling to make those modifications, as well as those voiced by my colleagues at the Southern Environmental Law Center, then the permit must be denied. We implore SCDES to do all within your power to stand for justice and safeguard this community. Thank you.

(Applause)

HEARING OFFICER ELLENBERG: Thank you, Ms. Poole. Are there any others who are representing an organization who would like to make a comment tonight?

I think we're going to start calling on some of the individuals who indicated they want to speak tonight. So I'm going to give a few names, so you can kind of get a little closer. And again, that way we can hear from as many of you as possible. So, Alex Turner, Allan Arthur, Allison Tracy and Alva Pack. We have Alex Turner, Allan Arthur, Allison Tracy, Alva Pack. Sir?

MR. PACK: Y'all, I don't mind going first if I can get up.

HEARING OFFICER ELLENBERG: If you're near a mic, come on -- come on down. Yeah.

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

MD. PACK: Okay. I am Alva, A-l-v-a, Pack, P-a-c-k. My lovely wife Janice and I live at [redacted], which is 400 feet away from the data center. I want to talk about air. The air we breathe and the pollutants in it and the DSS monitoring -- DES. DS -- DES knows control of fugitive particulate matter, AQI PM2.5. We do not understand these formulas and scientific lingo, but we know about the dust in our -- on our cars and the dust in our lungs. DES knows what NorthMark Strategy told them and will tell them. We, the neighborhoods surrounding the data center -- our quality of life is destroyed, and we do not know what the future brings. DES knows what the future brings, because they look at mathematic formulas.

We know at 48 megawatts and 450 megawatts, gas turbine plants will emit pollutants. These will affect sensitive groups of people like infants and elderly. DES does not know I have nine grandchildren -- great-grandchildren, playing 400 feet next to the top 10 percent of all power plants in the state. We do not know what 450-megawatt jet-turbine-powered plants will affect our great-grandchildren's health in the future.

DES knows the data center located on North

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

Blackstock Road by the name of DartPoint. It has 1.6 megawatts of power. It is located in an industrial compound with no houses within 400 feet.

We know that 450-megawatt jet-engine power plant on Pine Street is 284 times -- 284 times of what DartPoint is. We are the -- are in the neighborhood where people, homes, children, pets, not warehouses, tractor-trailers and security guards. NorthMark, the investor of $3 billion projects, knows why they did not ask for 450 megawatts in the beginning. Could it be 48 megawatts was a foot in the door?

Would you want your family to live across the street from a jet airport, a jet-turbine 450-megawatt data center for the next 40 years? It will be like having a 747 on the runway 24/7. Please vote no to this 400-megawatt increase.

I have 10 seconds. I've asked NorthMark for six weeks who took Jennifer Byrne's place as their president who started this damn thing, and I can't get an answer.

(Applause)

HEARING OFFICER ELLENBERG: Thank you, sir.

MR. TURNER: So I apologize. I didn't prepare anything. I didn't know I was speaking. But I have two

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

questions. Who wants the data center in Spartanburg? Stand up.

HEARING OFFICER ELLENBERG: Sir.

MR. TURNER: Who wants it? Stand up.

HEARING OFFICER ELLENBERG: Could I -- could I at least ask you to give your name for the court reporter, for the record, sir?

MR. TURNER: I -- I apologize.

HEARING OFFICER ELLENBERG: Thank you.

MR. TURNER: My name is Alex Turner. I'm running for District 6 County Council, and I'll be on the general ballot in November.

(Applause)

HEARING OFFICER ELLENBERG: Let's make sure we capture the comments. Thank you.

AUDIENCE MEMBER: Nobody wants it.

MR. TURNER: My next question: Please stand up if you do not want the data center in Spartanburg. There's your answer. Thank you very much.

HEARING OFFICER ELLENBERG: Thank you, sir. Thank you, sir.

(Applause)

HEARING OFFICER ELLENBERG: Please make sure you start with your name for the court reporter, please.

MS. TRACY: Sure, and thank you. Hi. My name's Allison

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

Tracy. I'm a resident of Cherokee County and an employee in Spartanburg. I'm commenting in opposition to NorthMark's permit request to increase power generation at their facility on South Pine. What I want this Department to consider is what this increase means for the people, animals, and natural spaces that surround this site. The South Carolina School for the Deaf and Blind is approximately three miles away. I'm proud to work there to help students with multiple disabilities ranging from visual impairments and deafness, to autism and intellectual disabilities, to physical and emotional impairments. For many of them, our school is so much more than a classroom. It is their temporary home.

Students travel from across this state because our school is one of the only places that can meet their needs. These are children who already face challenges that most of us will never fully understand. Increased air pollution and noise pollution from this expansion, will affect the quality of air they breathe in the environment where they learn and live. For students who rely on hearing aids or cochlear implants, how will the increased noise and electrical interference from

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

these turbines affect their ability to communicate and learn? These are not minor inconveniences. They affect the child's ability to function in their daily life.

Also, Croft State Park is approximately eight miles from this site. Residents, families, and wildlife depend on these woods, creeks, and lakes. All of this is at risk when we allow the proposed expansion without fully understanding the environmental consequences. Pollution doesn't sit still. It moves through air and water and affects everything around it. The people of this community, the students at our schools, and the natural resources of this area did not agree to carry the cost of this expansion. Thank you.

HEARING OFFICER ELLENBERG: Thank you, Ms. Tracy. Did we have Allan Arthur? Is Allan Arthur here?

Going to ask for a few more names here: Amanda Page, Gary Poliakoff? Y'all help me. Okay? Amanda Stewart, Amy Collins. Please start and state your name, sir.

MR. POLIAKOFF: Thank you. Gary Poliakoff. I'm an attorney in Spartanburg, and I'm currently on the board of Upstate Forever. I was on the board of South Carolina Environmental Law Project for many

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

years and been on the boards of lots of other environmental groups. I've litigated against DHEC in every court in the state over the course of 48 years, from --

(Applause)

MR. POLIAKOFF: -- DHEC hearing officers, to the DHEC board, the ALC Court -- Administrative Law Court, Court of Common Pleas, Court of Appeals, South Carolina Supreme Court. In all of my cases, I've never represented a person or entity with environmental violations of any kind. Never represented the violator, and I've never had DHEC on my side ever. In fact, in most of my cases, DHEC's lawyers huddle up with the polluters lawyers on what to do next and the strategy, etc. DHEC has a long history of not only allowing companies that have no qualifications to do what they're proposing to do, but allowing them to bend the rules, and that's what's occurring here.

The history of --

(Applause)

HEARING OFFICER ELLENBERG: Please limit your interruptions. Thank you.

MR. POLIAKOFF: -- history of DHEC is that it will counsel companies on how to provide as little

notice as is possible to the public. In the present case, they're not only providing as little notice as possible, they're actually in violation of a number of federal regulations -- state and federal. State Regulations R61-62.5 and 61-62.70, in particular. In every way that the term "major facility" is defined, this is a major facility. They -- DHEC -- DES now, formerly DHEC, has allowed them to continue to call this a minor facility. These things are well defined in the regulations. There is no legitimate basis to call this a minor facility. It is a major facility.

The difference is there's a lot more scrutiny for a major facility than there is for a minor facility. Number 1, a lot more scrutiny in terms of public notice, opportunity to be heard, public hearings, information, etc. Additionally, there's far less requirements for them to prove they're able to handle this. We don't know a whole lot about Valara or NorthMark at this point, other than NorthMark appears to be, not a company in the business of handling environmental issues or problems, but mostly an investment group. Seems to be a holding company. They've done a lot of banking in the past. It seems to be investors.

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

None of them are from South Carolina. Even the current facility contact is from Texas. These are people who do not care what goes on in the place where they're going to affect -- adversely affect the quality of life for many people here. DES, formerly DHEC, will often claim, "Well, if there are problems, you can bring that up with DHEC enforcement." Mark my words, DHEC enforcement is among the laxest in the United States. They allowed --

(Applause)

HEARING OFFICER ELLENBERG: Again, if we can hold the interruptions, we can get more comments.

MR. POLIAKOFF: There are a few examples DHEC can -- can point to where they have done some type of -- of monitoring or enforcement. But enforcement by DHEC comes after years of people suffering. There are many examples as to why companies come to South Carolina. Lots of companies come here because they do like the people here. Lots of other companies come here because they know they can get away with environmental violations.

(Applause)

HEARING OFFICER ELLENBERG: Please.

MR. POLIAKOFF: Another thing, it wasn't long ago when

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

South Carolina nationally was known as the dump state of the country, because for every category of waste that the federal law defines, from nuclear to hazardous, toxic, infectious waste, every kind of waste on down to municipal solid waste, we had among the largest dump facilities in the country, taking back those kinds of waste from so many other states. Reason being for they are located here, it's much easier to get a permit in South Carolina than it is most states. And once you're up and running, there's virtually no monitoring and enforcement. Is -- it's a wet noodle. It barely takes place at all.

And so you cannot count the -- the public of Spartanburg cannot count on DHEC to do anything when this facility is out of what they're currently saying it is. Again, I -- I could go into more detail about what the differences are between major and minor. This meets the definition of major. DES is allowing them to pursue a fraud and a misrepresentation by calling it minor.

HEARING OFFICER ELLENBERG: Thank you, sir.

(Applause)

HEARING OFFICER ELLENBERG: Gary, thank you. If we can continue to -- to have others come up. I'm going

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

to make sure that we hear from as many as possible.

(Audience members shouting out)

HEARING OFFICER ELLENBERG: I'm --

(Audience members shouting out)

HEARING OFFICER ELLENBERG: I would like to see if we have Amanda Page, Amanda Stewart, Andy Collins. Are y'all in the building and wanting to comment? I'm going to continue to call some names. Please come forward so we can continue to hear these comments that we do value. Angela Adams, Ann Bryan, Ann Brown, Arlene Williams, Barb DiPalma. Do we have Barb DiPalma?

MS. DIPALMA: That's me.

HEARING OFFICER ELLENBERG: Oh, thank you.

MS. DIPALMA: Hi. I appreciate you hearing me. After hearing a couple of other people speak, I actually ditched my speech. My name is Barb DiPalma. I'm from Inman, South Carolina. And I would actually like to address something for Dr. Pack regarding Jen Byrne. And I believe that she still is there. She serves as the group COO and president of the High-Performance Computing Division. She leads operations and strategic data infrastructure initiatives, including the company's multi-billion-dollar compute center expansion.

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

She previously worked at G-Research, owned by Peter de Putron and she spent six years there as the Chief Operating Officer for leading London-based quantitative research and technology firm. And she also worked at Lockheed Martin for overseeing military and commercial space programs. And she also held previous roles as VP of Technical Operations and Technology. And she also serves as a board member for SES Satellites and healthcare tech providers, which generally, I feel like the data center is more of a power plant and military installation than just for your AI and your Netflix.

In terms of the DES qualifications to properly identify the pollutants on this permit, it seems like this air construction permit modification got signed off on by some people from Jacobs, which is a consulting firm for data centers. And I lost my notes on the other person, but I -- I have to question that Tyler Dunlop has been in this position for nine years, but it seems like he came right out of school and then is just probably told what to do and how to sign off on these things when intimidating lawyers and third-party consultants are involved and intimidating him. And that's all

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

I have to say. Thank you.

HEARING OFFICER ELLENBERG: Are there others that we've called on? Let's see. I think we're -- next we have Bill Scott, Carolyn Reed-Smith, Chris Klein. Mr. Scott?

MR. SCOTT.: Thank you. My name is Bill Scott, B-i-l-l S-c-o-t-t. I've been a resident of Spartanburg for over 25 years. This is where I raised my family, and I currently have children and grandchildren who live here. I live about 3 miles from the -- the proposed site. I'm concerned about air, water, and noise pollution that this data center will emit.

Valara is not above the law. According to the Southern Environmental Law Center, Valara was supposed to have a certificate of environmental compatibility and public convenience and necessity before commencing construction. This certificate includes a public process that involves case dockets, public witness hearings, and evidence from the utility environmental groups and the public. They didn't do this.

They were supposed to have this certificate before they started construction. They're basically thumbing their noses at the Spartanburg community. If they are in violation of the law

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

before the center is even built, one can only assume that it'll get much worse for the residents of our county.

When I --

(Applause)

HEARING OFFICER ELLENBERG: Again, please, let's --

MR. SCOTT: When I asked them about this, this evening, they said, well, they couldn't really comment on it because it was pending, okay? No one likes to see a vacant manufacturing plant, and I understand the city and county's desire to generate tax revenue at the former Kohler plant. The Kohler Company was great for Spartanburg. Mike Kohler, the CEO, was a community-minded individual who loved this city. Unfortunately -- unfortunately, this data center with their no-name CEO, has no interest in the health/welfare of our community. And the absence of this phantom CEO from this meeting tonight speaks volumes.

With regard to noise pollution, I asked them what the -- the noise pollution would be like, and they said, well, they would be underneath the limit that Spartanburg County has, which is about 70 decibels. That's not good enough for me. I want to know what it's going to be right there at the

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

street level 24/7. And she did say that she would give me that information. Please do not allow Valara to expand their data center to generate nine times more electricity than they initially proposed, equaling nine times more pollution. The health of our community is more important. Thank you.

(Applause)

MR. KLEIN: Hello. My name's Christopher Klein. I live within three miles of where this proposed data center is going to be located. If NorthMark is allowed to have a 450-megawatt facility, this would mean that Spartanburg would be hosting one of the top 20 data centers in the country by megawatts.

We shouldn't be calling this a data center. This is called "hyperscale." Let that sink in for me. One of the top 20 largest hyperscale data centers in the country.

The amount of carbon monoxide, carbon dioxide, carbon -- or nitrogen oxide would drastically change the city. If allowed, this facility would produce between 870 and 960 million tons of carbon dioxide annually. And that's if they're operating at 55 percent capacity. The likely number is well north of 1 billion tons of carbon dioxide. The

smog, the foul smell, and the noise it would create, not to mention the higher electricity bills we all saw back in January and February, will be swapped for higher natural gas bills.

What are we doing? If any of you have family and children, I implore you to think of them. The tech industry's motto is, "Move fast and break things." Well, NorthMark has been moving very fast to build its facilities out. And if allowed, they will break the City of Spartanburg. Do not allow them to do so.

NorthMark and the City have thrown out numbers like $2.8 billion investment like that's a great thing. But this doesn't in any way, shape, or form the benefit or investment to the people of Spartanburg. Let me throw out a couple numbers for you. At full capacity, it would produce 23,000 pounds of nitrogen oxide and 10,000 pounds of carbon monoxide daily. Those are real numbers that the people of Spartanburg care about. DES needs to vote no to the pollution permit and keep Spartanburg clean. Thank you.

(Applause)

HEARING OFFICER ELLENBERG: Thank you, Mr. Klein. Ms. Reed-Smith?

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

MS. SMITH: Thank you for coming. My name is Carolyn Reed. C-a-r-o-l-y-n. Last name R-e-e-d-Smith. I'm in Boiling Springs, Spartanburg, and I'm in the Spartanburg water area. Today, I wanted to attend this meeting to make a comparison of the plan that was made in 2025 to what is needed for the changes that is being requested. And to say please do not approve any of their expansion. I feel like what is done today should have been done in 2025. The meetings like this should have been done during the planning stages in 2025.

What was said about 2025 about the resulting use or misuse of environmental? The initial meetings with -- with NorthMark were held in secret. In 2025, they did not lower -- they did not lower the possibility of stronger restrictions, imposing moratoriums, or even knowing that they had banning of the construction. And these are the things that they've overlooked because they did it in secret. When you have a mis-reputation (verbatim), it should not be legalized. An intention or something negligent, false representation made verbally or by conduct or sometimes by non-disclosure or concealment and all for the purpose of deceiving, defrauding, or

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

causing anything to rely on that in a different way.

This appeal should be not -- this should not be -- we should repeal this ordinance. They are not protecting our children, our jobs, our environment. Where are the studies that will show the transfer from 45 watts to 450? And what will be done to the land use, to our community, our environment? The use of water will be contaminated and the land. And water -- and how do we eliminate it? So many of these waters that will be polluted, our different lakes and our rivers. Animals will be killed. And what about the noise level? This move by NorthMark is abusive. It is extortion. It is a -- it is criminal. It is shady business. They want to take ten times the advantage of 30 years of no tax and no real contracts to follow environmental regulations. Thank you.

(Applause)

HEARING OFFICER ELLENBERG: Thank you, Ms. Reed-Smith. We have Chris Klein, Clemson Turregano, Courtney McClain, Danielle Helf. Thank you for coming down. And if you could introduce yourself to start. Thank you.

MS. MCCLAIN: My name is Courtney McClain, and I am a

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

lifelong resident of Spartanburg. And I am also currently running for the United States House of Representatives to represent Spartanburg and Greenville. And today, I am requesting -- I'm requesting that the South Carolina Department of Environmental Services deny the requested quality permit for the data center that is being built by NorthMark -- NorthMark Strategies and Valara Holdings on Pine Street.

Nationwide data centers are at the center of a public health crisis and people that are being impacted by them are being ignored. I am one of the residents that live near this center, and we are currently seeing an increase in our electricity bill and a decrease in our water pressure. Environmental experts have also warned that the increase to 450 megawatts of power that has been requested will likely cause harmful pollution, including fine particulate matter, smog-forming compounds, and cancer-causing agents. So not only would our electricity bill continue to rise, water pressure continue to decrease, but then the very air that we breathe would not be suitable.

The county council is now considering a moratorium on data centers in the area and nothing

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

should be approved until the county council finalizes and votes on this moratorium with the regulations, restrictions, and protections that are needed to prevent harm to residents like myself that are living around the center. The people of Spartanburg have resoundingly rejected Project Sparrow, and now we are standing here, again, overwhelmingly asking you to reject NorthMark Strategies and the Valara data center permit because we need to protect people and not corporations. Thank you.

(Applause)

HEARING OFFICER ELLENBERG: Thank you, Ms. McClain.

DR. TURREGANO: Madam Commissioner, with your permission, I'd like to turn my back to you so I can face out this way.

HEARING OFFICER ELLENBERG: Sure.

DR. TURREGANO: Madam Commissioner, thank you very much for the opportunity to speak tonight. My name is Dr. Clemson Turregano, that is C-l-e-m-s-o-n. Last name Turregano, T-u-r-r-e-g-a-n-o. And in transparency, I am the Democratic candidate for South Carolina House District 33, the house district where the data center is located.

I live in one of Glendale's suburbs near the

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

impact zone of the NorthMark data center, and I respectfully oppose this request for additional generating capacity, not only because of its environmental impacts but because of what it says about trust, transparency, and our community. Tonight's hearing is officially about an additional 400 kilowatts of generating capacity that was not included in the original proposal. But for the families who live around this facility, this hearing is about much more than generators. It's about trust. It's about transparency. It's about protecting the quality of life for the families who live in these neighborhoods today and for those who will live here long after we're gone.

As you know, the mission of our environmental agencies goes beyond public health and environmental quality. Ultimately, it is about the livability of the communities we call home. And that's what is at stake for our families tonight. Families know that good neighbors build trust. When you're putting up a fence, you ask the neighbors first. You build trust before the construction begins. The people living around this hyperscale, major facility deserved to know the full scope of this project before the construction

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

started, not after millions of dollars had already been invested and major decisions had already been made.

Now, when I taught public policy and government, I used to tell my classes that good public policy depends on informed consent. The need for more generators was not disclosed, and now the burden and the air pollution and the noise pollution and the water increases fall on the surrounding neighborhoods, as well as the air pollution on the families who call those neighborhoods home.

One thing the community was unaware of is the noise. And I'm aware that DES does not regulate noise, but these generators are going to create a significant noise issue. NorthMark estimates these generators could operate at approximately 65 to 70 decibels, about the sound of a household garbage disposal. Imagine hearing that sound continuously in your house day after day, year after year.

It's about whether trust, transparency, and community still matter. I believe they do. Thank you.

(Applause)

HEARING OFFICER ELLENBERG: Thank you, Dr. Turregano.

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

MS. HELF: Hey, guys. It's kind of wild following to a lot of candidates, but, hello. My name is Danielle, D-a-n-i-e-l-l-e. Can you hear me? Hello?

HEARING OFFICER ELLENBERG: Use the mic.

MS. HELF: Yes, ma'am. Yeah. I guess I wanted to start by asking everyone if they're familiar with the parable of "Give a Mouse a Cookie." Right? If you give a mouse a cookie, like 50 megawatts of data, maybe they're going to want a little bit more. Then they're going to want some more. And then a little more. And that's exactly what we're seeing now, right? We're seeing a little bit by little bit this company growing and -- I don't know. I work in project management. If I failed in my job that poorly that the scope has changed entirely before the project opens, I'd be absolutely on my, you know, butt out the door, right? That's not an appropriate way to do business, and it's not an appropriate way to act within our community.

I guess my main thesis is we don't need to subsidize this random company's profit line with our community's lungs. You know, we don't need to subsidize their profit margins with our children's, you know, schools, with our families, with our

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

neighbors. That's just -- we have very different visions of what helping Spartanburg looks like. And I think helping people move into affordable housing, giving them clean water, I don't know, making sure the potholes are filled, making sure things like, you know, environmental pollution isn't rampaging. I think it's just important that you can serve the public, and I think it's really critical that you don't just do whatever you want. So that's my time. Thanks y'all.

(Applause)

HEARING OFFICER ELLENBERG: Thank you. My apologies. I hit the wrong button. My apologies. Hang on one second. I'm going to use some of the paper copies that we have. So we have Elizabeth York and Ian McDonald and Ariel Burrow? Do we have someone ready to start?

MR. MCDONALD: Do you want me to go first? Okay. Ian McDonald, I-a-n, M-c-D-o-n-a-l-d. And my wife and I are here from -- actually, Mill Spring, North Carolina. So this is very much of interest to see what could be happening in our backyard.

As a retired mechanical engineer who spent an awful lot of time in the mining and the oil and gas industry, I can tell you that major projects are

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

very clearly defined in the outset. But how they roll them out is part of the appeasement to the public and making sure that they can clear the hurdles as those hurdles come up.

So I would say to, you know, DES that the time to get involved is not when there's an application for the most recent air permit. It's too late. You need to be involved up front with whoever's invested in your area to truly understand the real scope of the project and what the impact will be. And the reason those companies don't sell that is because it's unpalatable. Right? So it's much easier -- if you're going to expand roadways, you do it a little bit at a time, right? Because you don't want to disrupt someone. But over a period of time, it's happened.

And -- and, you know, there's a possibility with all of this capital -- intensive capital buildout that's taking place, you're going to end up displacing communities. And that's the price that you could pay. So it -- it comes back to knowing up front what is the scope and getting involved early for the regulatory and permitting agencies. Once you do it in the drip-feed method, it's too late.

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

MS. YORK: Hello. Thank you for the opportunity to speak. My name is Elizabeth with a Z. Last name is Y-o-r-k. I'm a retired college professor at Converse University and a concerned citizen. I was born and raised in Spartanburg, South Carolina.

My comment is very brief and mirrors many of the comments that have previously been made, and so my comment will be short. I'm extremely concerned that construction of this facility has begun without the informed consent of the citizens of Spartanburg. Thank you.

(Applause)

HEARING OFFICER ELLENBERG: (Inaudible) Ms. Burrow?

MS. BURROW: Hello. My name is Ariel Burrow. That's A-r-i-e-l, B-u-r-r-o-w. A few months ago, I saw this video, and it was this elderly couple deciding -- or describing why they decided to retire in Grand Prairie, Texas. They said, "It was real quiet, still. We had all kind of animals out here, and we loved it." I related. The forest beside the roads and the quiet nights where what drove me back to Spartanburg after a couple years away.

But today, they must worry about their brains not working right and they talk about headaches that never go away, mystery strokes and pulmonary

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

embolisms happening to completely healthy people. The difference was a data center built to mine Bitcoin. Another resident just said, "Every family here is sick."

After various reports and health crises, the data center made several promises to engineer processes to keep sound out, to be a better neighbor. When they did finally do something, it was simply an ineffective wall. The residents of Grand Prairie are still sick.

As stated earlier by Emily Wyche, approximately 220 tons per year of nitrogen oxide, 158 tons per year of particulate matter, 9 1/2 tons per year of sulfur dioxide, 200 tons per year of carbon monoxide, 60.9 tons per year of volatile organic compounds, and 9.39 tons per year of formaldehyde are the emissions proposed in the draft. This permit asks to pump nearly 10 tons of formaldehyde into our air each year for data center operations to host computing services for internal use, as stated in the application.

While the study conducted by the University of Michigan found that most data centers fall short of their flowery economic promises, this project, in particular, promises less than 30 jobs. While

reading the application, I tried to access equipment information and facility emissions documents that were linked there. Each time, I was denied access. Please give me one moment.

HEARING OFFICER ELLENBERG: You have a few seconds left here.

MS. YORK: I'm sorry. I apologize. I have several health issues, and I started feeling faint. Basically, the only thing I could find on this company was a promise to be a better neighbor -- or, sorry, to be a good neighbor, that they want to be a good neighbor. But good neighbors care whenever you say that you don't want something. When you ask them to stop doing something, a good neighbor listens, because they care about your well-being, too, and not their bottom-line profit. Thank you.

(Applause)

HEARING OFFICER ELLENBURG: Thank you, Ms. York. Next, we have Emory Caraviello, James Mack, Janny -- is it Janny Santos? Jennifer Bradham. And forgive me if I mispronounced a name. I'm -- my apologies. Yes, ma'am. Would you like to speak now?

MS. SANTOS: Janny Santos, J-a-n-n-y S-a-n-t-o-s. Good evening. My name is Janny Santos. I'm a combat

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

veteran, a mother, a student at USC Upstate, a neighbor. My children and I live here in Spartanburg County because this is where we go to school, where we have also cared deeply -- come to care deeply about this community.

Service did not end when I took off the uniform. Today, service means standing here speaking up for people who will live with the consequences of the decisions that will come from this process.

During the NorthMark presentation last night, one statement stayed with me. We were told this facility's emissions would represent the percentage of South Carolina's total emissions. What stayed with me was not the number, it was the comparison. Because when we choose the comparison, we also shape the conversation. Comparing one facility to an entire state's emissions made me stop and asked whether we are looking at this from the perspective of South Carolina or from the perspective of the families who live here. Those are two different ways of understanding the same information.

I hope, as this permit is reviewed, we keep our focus on the people who will experience the cumulative impacts of -- if it is ultimately

approved. When we compare one facility to an entire state's emissions, I worry we stop asking what those emissions mean for the people who actually live here. Spartanburg is not an empty spot on the map. It is home, it is families, neighborhoods, schools, churches, and generations of people who have built their lives here. We already live alongside manufacturing, freight rail, inland port, airport, major employers. I hope we are asking not only whether this one project meets the law, but also what it means when it is added to everything that already exists.

As a mother, I think about unintended consequences. We rarely see them coming. We recognize them only after they become someone else's burden to carry. I want my children to inherit more than economic opportunity. I want them to inherit clean water, healthy air, thriving wildlife in a community that values people as much as progress.

I want them to inherit a community where people matter enough to ask difficult questions before making permanent decisions. A place where we value clean water, healthy air, the character of our community just as much as we value growth.

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

Business comes and goes, markets change, investments move. Families stay, homes remain. The choices we make today become part of the place our children will call home tomorrow.

Before a final decision is made, I ask that we consider one question: Are we evaluating the project only on what it promises today, or what -- also on what it asks the future generations to accept? Thank you.

HEARING OFFICER ELLENBERG: Thank you, Ms. Santos. Next if you could please introduce yourself.

MS. CARAVIELLO: Hi, my name is Emory, E-m-o-r-y, Caraviello, C-a-r-a-v-i-e-l-l-o. I'm a Spartanburg resident. Since November, we've been gathering as a community to share concerns about our county being impacted by high powered computing centers coming to our county. This air permit will allow the proposed 450 megawatts of power be generated on site. To give some reference, 450 megawatts is enough to power around 270,000 homes. As of 2026, our county as a whole only has 140,000 homes, almost double the current residential use.

This air permit might seem small on a state level, but these data centers are a nationwide expansion where every small town is at risk of

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

pollution. We need to understand on a worldwide scale that the past year gas-fired power demand has jumped 31 percent. The US, as always, is leading the front and demands a quarter of that. In a study by Cornell University in November of last year, we found that this expansion pace is estimated to add 24 to 44 million metric tons of carbon dioxide into the atmosphere, the emission equivalent to add 5 to 10 million cars worldwide.

I'm asking you to consider denying this air permit for Valara as the emissions will not only be harmful to our county as a whole, it will also add to the rapid decline of our natural resources worldwide. We have to be preemptive now for a clean future. Thank you.

DR. BRADHAM: Hi. First off, I want to thank you for providing this opportunity for us to speak. We really appreciate you all being here. My name is Jennifer Bradham, B-r-a-d-h-a-m. I have a PhD in environmental science from Vanderbilt University. I'm also an associate professor of environmental science here. I am also a mom, a resident that lives within three miles of the data center. And I want to plainly state that as a mom, as a resident, and as a scientist, based on published scientific

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

research, that I oppose granting this permit.

So as -- as part of my research from October 2024 through April 2025, my research team and I set up Purple Air air quality monitors throughout Spartanburg's urban footprint. We particularly -- we specifically quantified particulate matter 2.5, which is just one way of measuring air quality. According to the EPA's air quality index metric, only about 48 percent of the time was our air quality qualified as "good." That is less than one out of every two days was our air quality in Spartanburg's urban footprint categorized as good based on EPA standards. The rest of the time our air quality was categorized as moderate, unhealthy, or hazardous.

Particulate matter 2.5 is a pollutant that we already have problems with, based on these data, but it's also a pollutant that's going to be emitted from this data center. So we can expect these values to be minimum values and only increase in severity. Research -- recent scientific research modeling the impact of increased air pollution on data centers is incredibly alarming. We're talking increases in asthma, COPD, cardiovascular disease, neurological effects,

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

cancers, premature mortality, and many more. One study from Virginia found that data centers emitting less than 10 percent at their permitted levels of emissions resulted in an additional 220 to 300 million dollars in associated healthcare costs. When those emissions were equal to what the data centers were actually allowed to permit, those increased health costs were estimated to be 2.2 to 3 billion dollars per year. So those numbers are astounding.

Moving forward with this data center is not what's right for the Spartanburg community. Many of those who are experiencing the financial benefits of this in the short term are not those who are going to experience the negative healthcare benefits in the long term. That's us, those who live here. Moving forward with the data center and permitting increased emissions will require that everyone involved with this decision-making process look in the mirror and admit to themselves that profit and development are more important than the health of our loved ones, friends, neighbors, and fellow residents of Spartanburg. Thank you.

(Applause)

HEARING OFFICER ELLENBERG: (Inaudible.) Could we

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

please -- we have more comments to receive. Thank you.

MR. MACK: Good evening. My name is Greg Mack, G-r-e-g M-a-c-k. Just like the trucks. My wife and I live in The Oaks subdivision. Our home sits about three-quarters of a mile away from the South Pine Street site. My first thought on this project was, "Great. Somebody's using the old Kohler plant productively and they're going to pump about $15 million a year to our school and public works for the next 25 years after a multi-billion dollar investment. What could be wrong with that?"

Then I learned of the power plant, 450 megawatts of generating power, new gas turbine technology, etc. And I tried to be okay with that too, but I did wonder: Just how big is 450 megawatts? Sounds big, but is it really?

Well, here's the comparison. You folks are from Columbia, you'll be familiar with this. The hydroelectric part of Lake Murray Dam has a net generated capacity of 207 megawatts. The McMeekin Gas Turbine plant located in proximity to the dam has a generating capacity of 250 megawatts. If you add both these together, you get 457 megawatts, approximately the same capacity as this project

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

that will sit across the street from my house and within a three-mile radius of 15,000 homes.

The Lake Murray plant has about 7,000 homes in a -- within a three-mile radius, and it's buffered by a mile-and-a-half long earthen dam, a lake, a dense natural space on either side of the Saluda River and just under half its power comes from hydroelectric turbines that use lake water as a propellant with no pollution, making that part practically green. The proposed NorthMark plant will be in wide open spaces spewing close to 800 tons of polluted -- pollutants each year. Let that sink in. To me 800 pounds is a big number. We were talking 16,000 pounds. Where will all that pollution go? Which brings me to the punch line.

If Duke Energy or Dominion Energy had asked for a permit to build a power plant with 98.5 percent of the capacity of Lake Murray generating an estimated 800 tons of pollutants annually within a three-mile radius of 15,000 homes, would you even remotely consider approving it? I doubt it. That is exactly what we're looking at here.

When we bought our homes, we invested in the safety and peaceful character of Spartanburg County, and none of us signed up for a Lake Murray-

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

sized power plant next door without the pretty lake. Thank you.

(Applause)

HEARING OFFICER ELLENBERG: Thank you, Mr. Mack. We have someone who signed in just as Kelley. I don't know if that's her first or last name, but K-e-l-l-e-y. We have Lewis Smith -- or Lewis B. Smyth, Livingston Hawkins, III. I see some people coming forward. Sir?

MR. HAWKINS: Yeah. My name is Liv Hawkins. I'm an employee at Wofford College. I'm a board member for Keep Spartanburg Beautiful. I'm the chair of the city's Bicycle and Pedestrian Committee. I live about five-ish miles away from this hyperscale data center. It's about -- sits about a few miles outside of our city limits. Community's important to me; sustainability's important to me; the future of our planet and our community is important to me.

I've heard the word "neighbor" a lot tonight, and of course it sounds like on NorthMark's website, they aspire to neighborly associations. I think what we all can agree on in this room is that they have not met that. Having a former county council member who's now a state employee appointed by Governor Henry McMaster say that this is not a

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

data center, that's not neighborly. Having a -- you know, being approved for one level of power and then asking for another before you're even open, that's not being a good neighbor.

All of these tech corporations, NorthMark, OpenAI, Cloud, all of them constant -- Meta -- looking at us and telling us hyperscale data centers are inevitable and they need to be in your neighborhood and you have no choice. That is not neighborly. Especially when they have proven time and time again that the infrastructure is not ready, the environmental impact is not ready.

Ultimately, I believe that DES has a responsibility to say no, especially as we look to the federal administration and we have an executive order stopping AI from being regulated on the state level. We have environmental restrictions being eased. As a community, as a state, as a county, we need to pick up that slack and hold these corporations accountable. Corporations are not going to be a good neighbor out of the goodness of their hearts. They need to be forced.

I think that the message to NorthMark, who hobbled together a website and, you know, created some shitty logo for St. Pine -- I think that they

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

should be told either they can be a good neighbor or they can leave. And ultimately, I hope that the next community they try -- they try to do this in do the very same thing and tell them the same message and they keep getting kicked, kicked, kicked, kicked until hopefully NorthMark is no longer a thing. So that's my message. Thank you.

(Applause)

HEARING OFFICER ELLENBERG: Thank you, sir. Ma'am?

KELLEY: Hi, my name is Kelley. I have lived in Spartanburg County for a large chunk of my life, and I'm raising my family here. I signed in with just my first name because I don't think it's necessary for the company that is seeking approval to know everything about us and our information and how to contact us when they will tell us nothing about them.

They are now trying to be good neighbors, just like the other gentleman said. They're following a policy of secrecy and subterfuge like so many other data companies. You -- you -- there is -- there is a plan. You say, "Oh, we're going to do this and it's going to be so good. We're going to bring economic development." Where is the proof? There is no proof. They start small. They get their

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

foot in the door, and they go, "what are you going to do about it?"

Well, what they're doing about here is they're telling us, "Well, you know, our original proposal did state that we wanted to have this huge generation facility, and we started small because we weren't sure about what equipment would be needed." These were answers -- answers they gave last night during the impromptu tele-town hall where they gave our community of 350,000 residents of Spartanburg County the opportunity for up to 1500 people to be heard -- or to participate in the call. Maybe 20 were heard. Okay? But what they said in their answer to one of the questions was, "Well, what happens if -- if DES doesn't approve your request?" And it was very telling.

These beautifully transparent, good neighbors said, "Well, you know, we don't know." We don't know what we'll do if we don't get that rubber stamp because we don't have a Plan B. We're here. This is what we're going to do, and y'all may as well just get used to it." That was the message that our good neighbors gave us.

Y'all, please, please think about it. What would you do if somebody were treating your family,

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

your community -- they're going to turn this into a wasteland, yet another toxic waste dump. Thank you.

(Applause)

MR. SMYTH: Good evening. My name is Blake Smythe spelled Bravo-Lima-Alpha-Kilo-Echo Sierra-Mike-Yankee-Tango-Hotel. Blake Smyth.

HEARING OFFICER ELLENBERG: Thank you, sir.

MR. SMYTH: I was in a neighborhood meeting two weeks ago, and it was with three of the NorthMark reps. And it was stated in that meeting that they have not any experience in this type of construction that -- or this type of a plant. That we're going to be the guinea pigs. So we're going to be the guinea pigs for all these numbers that have been presented previously. And let me bring up a couple of them. It's a power plant. The high-performance data center or data compute center possibly will have some problems with water pollution. If they meet their expectations, it'll be very minimal, but it'll still be there. The power plant, there's going to be air and noise pollution and problems. Even if they meet the EPA limits, it's still going to be pollution and a noise.

They said that -- last night, on the

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

previously mentioned telecon, they said that the pollution would only be 5 percent of the county overall pollution, that they would -- that would be what their emissions would be. However, that's still going to be the largest pollutant in the county, and it's still going to be coming into our air and possibly water.

They say that they're going to meet the EPA standards. That's well and good. But as the doctor said earlier, the pollutant -- or the pollution in the county, according to their monitors for the air pollution, we've got less than one out of two days that are good quality and we're going to -- and that was before this five -- additional 5 percent of the pollutant is going to be added. Their testing was in the last several months without the data center there, without the turbines. So I think that one out of two days is going to shrink.

(Applause)

HEARING OFFICER ELLENBERG: Thank you, Mr. Smyth. We have some additional names here. Mark Felk, Mark Gillespie, Matthew Thomas, Michael Ferguson, Michelle Lutke.

MALE: Miss, are you going in alphabetical order?

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

MALE: No.
HEARING OFFICER ELLENBERG: When we were -- we were sorting by who pre-registered and who is in attendance and who had said they would like to make a oral comment. That's where we're starting so --
MALE: Well, I pre-registered yesterday, but I didn't get -- I thought you was . . .
HEARING OFFICER ELLENBERG: Sir, if you're ready.
WITNESS GILLESPIE: Good evening. My name is Mark Gillespie, M-a-r-k G-i-l-l-e-s-p-i-e, and I'm a lifelong resident of Spartanburg. I am standing here tonight to urge the state to deny the air construction permit for the Valara Holding expansion. Let's look closely at what is happening on South Pine Street. This facility originally bypassed a full public review by keeping its initial energy footprint under 48 megawatts. Now the developer is coming back to retroactively drop a massive 450-megawatt continuously running natural gas plant right into our community.

All of this environmental destruction is being asked of us just to fuel a private data center. Our community has spent decades carrying the heavy weight of manufacturing and intense industrial traffic. We are already overburdened. According

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

to the American Lung Association State of the Air Report, the Greenville-Spartanburg metro area already suffers from a D grade for ground level ozone pollution. We simply cannot afford to slip any further.

If this permit is approved, 11 massive gas turbines will pump an estimated 990 tons of new air pollutants into Spartanburg's air corridor every single year. We aren't just talking about carbon dioxide, we're also talking about massive amounts of nitrogen oxide and sulfur dioxide. When these compounds mix with our humid South Carolina summers, they create ground level ozone and toxic fine particular matter known as "PM2.5." These are not harmless invisible particles. PM2.5 slips directly past our body's natural defenses, deep into our lungs, and directly into our bloodstreams.

Peer review medical studies from Stanford and EPA proves that living near continuous combustion gas plants leads to documented spikes in asthma attacks, cardiovascular disease, strokes, and premature death. There is no safe level of exposure to this type of pollution. Worst of all draft permits that this facility will emit uncapped amounts of formaldehyde, a known human

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

carcinogenic. This will immediately make one of Spartanburg County's single largest polluters. The county council recently passed a one-year moratorium on data centers because they know our resources are at a breaking point. I ask the DES to do its job.

(Applause)

HEARING OFFICER ELLENBERG: Sir?

MR. FELK: Yes. My name is Mark Felk, M-a-r-k F-e-l-k. We purchased our property at The Oaks. We built our home in 1995. Up until late 2025 and early '26, we enjoyed the peace and quality of life offering a living six miles outside the city limits. Our home sits between 1200 and 2700 feet from the power plant presently under construction. There are nine neighborhoods that surround this site nobody wants to talk about that also range between 500 feet and 1 1/2 miles. We're talking about The Oaks, Spring Lake, Sundance, Camp Croft, Keswick Farms, Glen Forest, Oak Creek Plantation, Four Mile Branch, representing thousands of people, pets, livestock, and priceless animals.

What was described to us about this project by former county council chairman David Britt was, "This will be a high-performance computing center

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

supporting engineering technology and the aerospace sectors." Britt confirmed this is not a data center. Y'all might remember that. "This center will not be a burden of our power grid by generating their own power of 48 megawatts, similar to the Kohler facility." This project is a power plant surrounding innocent people and generating 450 megawatts, polluting our air, creating constant noise, and consuming and adding pollutants to our water.

Because of all the scheming Congressman Shane Martin said it best when referring to Project Mark 1, Block 1 as a bait-and-switch scheme. You might remember that, too. This is a fact. I heard it. NorthMark admits we never -- to never having built anything of this size and scope before. And everything about this project proves it.

My air concerns are pollutants like formaldehyde, nitrogen oxide, particulate matter, carbon monoxide, sulfur dioxide, volatile organic compounds. My health concerns are asthma, chronic bronchitis, reduced lung function, increased respiratory infection, heart disease, just to name a few. Noise. There's going to be constant humming from chillers, running backup generators,

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

running turbine jets -- or jet turbine generators. Low frequency noise. Infrasound; that's very harmful to humans and worse to animals.

In 1776, our father's fought because of political overreach and coercion. Strangely enough in 2026, we're in the very same fight and preparing for the same outcome. Thank you very much.

HEARING OFFICER ELLENBERG: Thank you.

(Applause)

HEARING OFFICER ELLENBERG: Thank you, Mr. Felk. Is this mic on? Going to you, sir.

MR. THOMAS: Hello, my name is Matthew Thomas. That's M-a-t-t-h-e-w T-h-o-m-a-s. I'm just a guy. I think this is important. Don't have too many prepared comments, so I'll try to keep it short. Tonight we've heard from a lot of very intelligent people. We've heard from lawyers; we've heard from environmental scientists. And the consensus is pretty clear: This is not what Spartanburg County needs. This center is a power plant. This center is not going to benefit the people and the citizens of Spartanburg County in any material way and will only make things worse for us in terms of polluting the air, noise pollution, and polluting our water. Thank you.

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

(Applause)

MR. FERGUSON: Hey. My name is Michael Ferguson. What I've heard here tonight has said everything that I wanted to say, except so much more eloquently. DES seems to be a Bureau of Air Quality, and what we are hearing is a ninefold increase in the power generators and likewise, a ninefold increase in the pollutants. It's going to impact all of us in this room. Those going to be closest to the site are going to be affected a lot more in a concentrated area. For what? For a private data center that is basically going to profit hedge funds, polymarkets maybe, but certainly not the benefit of Spartanburg County with only 27 jobs being created. And NorthMark has just been very untransparent, very opaque on everything that they've been doing around this project. It's disgusting. DES listening to just the statistics that's being put out here tonight by the first three speakers should take those seriously under consideration and deny this permit. That's it.

(Applause)

HEARING OFFICER ELLENBERG: Thank you, Mr. Ferguson. We have Michelle Lutke, Nichole Gilder, Ryan Scott, Sheila Carter. Is it Starret Greene? Or Sturett?

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

Starret? If you would go ahead. Thank you, sir.

MR. SCOTT: Thank you. My name is Ryan Scott, R-y-a-n S-c-o-t-t. I live in Spartanburg in one of the nearby communities. Large projects such as the Valara NorthMark data center require significant planning prior to construction. These steps would include continual engagement with all stakeholders, including the residents of this community, providing transparent plans and details so that informed decisions can be made by all parties. This is not a new subject as it is referred to directly on the SCDES website.

Our community received no such details, and we were completely left in the dark until the surprise of major construction activities commenced at the Kohler facility. So I'm asking: Why did DES not hold a public hearing for the initial air permit? I asked that same question earlier tonight and the response I was given is that it wasn't requested. That is not good enough for me. That's not good enough for you. And the proof of that are the concerned citizens here this evening.

It's not too late to start moving in the right direction and listening with both ears to the concerned residents of Spartanburg. I'm urging

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

you, do not approve the second air permit requested for 450 megawatts. This amount of onsite generation is equivalent to major Dominion Energy and Santee Cooper gas-fired power plants in South Carolina. Why wouldn't this even be considered in a once peaceful residential area? According to pollution estimates detailed in the draft permit, the data center could become one of the largest industrial sources of harmful air pollution in the upstate South Carolina, essentially blanketing a residential community with polluted air. When the data center was first announced, the public was never informed of the harmful air pollution and noise that was coming with it. This project, even though currently incomplete, has already changed the lives of many for the worse. Please make the right decision. Listen to the people of this community. Do -- please do not approve the permit to expand to 450 megawatts. Thank you.

HEARING OFFICER ELLENBERG: Thank you, Mr. Scott. Whenever you're ready.

MS. GILDER: I apologize. I had prepared notes, and between what happened tonight and what I learned tonight, I had to change everything. My name's Nichole, N-i-c-h-o-l-e, Gilder, G-i-l-d-e-r. I

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

live in Oak Creek Plantation, which is, from what I've been able to determine, less than a mile from the data center. I met with several people out including Valara and NorthMark.

And I have to say my original questions were, since the project was only previously approved in 2025, how has the scope of the initial project changed that it now requires going from the 24 megawatts or 48 up to the 485 megawatts? I was shockingly informed that it had not changed. The original scope was for the 485, and that everything that was presented was due to the process that they had to -- for the permitting through DES was that it's a staged process. And so they went with the 48 because that's what they were building initially, and now we're onto Phase 2, which is why they had to go with the construction permit, which now brings in the additional 450. This is not acceptable.

Like, we were never informed. No one in my community knew -- that I know of, knew anything about this data center going up. We did not know until construction had begun. If you-all had put this forth or if they had put it forth truly as the 485, and it was a major contract at that point, and

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

the permitting was such how this got through Britt and everyone else is abhorrent. The lack of transparency is unbelievable. There is no wonder that there's not one public official -- state elected official in this audience.

(Applause)

Spartanburg is not for sale. We live here. We want to have everything that we purchased. We want a home that has trees and nature and water that is consumable and air that we can breathe.

My family has health issues. We came here because of the environment we were in was going to sustain us, not what this is bringing on. I defer to all the people with all the environmental science degrees and the lawyers who have done all the facts. I had some of those. You were much more eloquent.

This permit application must be denied. Valara NorthMark took a gamble on starting this project with the DES requirements of having staged applications. We have a chance to stop this second phase. Twenty-seven jobs are not worth this.

(Applause)

HEARING OFFICER ELLENBERG: Thank you, Ms. Gilder. Again, I appreciate all the comments that we're

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

receiving. I want to make sure we're accurately -- accurately able to record these. Ma'am would you like to go?

MS. CARTER: Hi. My name is Sheila Carter. And my father, he worked at Kohler, and he built his home on [redacted], which is less than five minutes from the Kohler plant. I am concerned of all of these chemicals that are out here. We've already had water contamination in the -- the Camp Croft, Glendale, Whitestone area, which I was diagnosed with interstitial cystitis; that is a water contaminated disease from plants with their chemicals and things. And also I'm concerned -- you know, we've also had issues with hand grenades in our area. My grandfather was blown up by a hand grenade in that area. We were never compensated. All of that to say, what we're going through right now, if we do not stop this power plant, we're going to have more medical issues, more respiratory issues, neurological issues, cancer issues.

And when my dad built his home and worked hard at Kohler, he planned to be able to have something for his grandchildren, for us to be able to enjoy our property, for us to be able to relax and spend time with our, you know, families and friends. How

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

are we going to be able to do that if we're constantly hearing noises, we don't know if we can go outside and not have a breathing problem or heart problem?

It is going to be a severe financial hardship and emotional hardship, not just to me, but everyone in this area. And also what happens if this is allowed to proceed and then you start taking people's homes. It's a lot to consider. And I'm -- I -- I've been asked to ask -- and yes, I'm upset about it. I've been asked to ask how is it that we were chosen but Tyger River -- Tyger River, they were able to say no, and they did not be pushed into something that they do not know about?

(Applause)

MS. CARTER: We didn't know anything -- we didn't know anything about this. It's just like -- yes, my dad worked for Kohler. Mike Kohler was a good man. Y'all bought the property. You went ahead and said, yeah, this is -- this is good, this is good. But now we need almost triple the amount of energy, power, water to keep these computers or whatever you have in there that's private to us. It's not fair. We do not know anything. And it's just like

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

we are going to either have to stay in these houses or -- or move out. And if you sell your house, it's going to be a depreciated value. If you stay in your house, you may have some severe medical situations, and you may not even know what it's coming from, but it's coming from the "power plant" "data system plant." What is actually going on? I ask, please do not proceed with this because we have not been given enough information.

HEARING OFFICER ELLENBERG: Thank you. Thank you, Ms. Carter. Sir?

MR. GREENE: My name is Starret Greene, S-t-a-r-r-e-t G-r-e-e-n-e. I want to thank DES for organizing this public hearing. I am in full support of all those who have spoken before me, that DES should give the highest consideration to reject this permit. There is something that wasn't said.

The permit implies an increase in the operations of the current data center. There will be a demand for more water. The current center is pulling about nearly half a million gallons of water each day. And expansion means it'll -- it will pull more. Now, let's bear in mind that 97 percent of the world's water resources is in the ocean -- is in the ocean.

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

HEARING OFFICER ELLENBERG: We have mic -- there we go. Microphone out of range?
AUDIENCE MEMBER: Pause his time.
AUDIENCE MEMBER: Pause time.
HEARING OFFICER ELLENBERG: We'll -- we'll allow more time. Mr. Greene? Derrick, we can pause the time. That might be a battery issue in the mic. My apologies, Mr. Greene.
MR. GREENE: Yes, thank you very much.
HEARING OFFICER ELLENBERG: So sorry.
MR. GREENE: I was saying that 97 percent of the world's water resources is in the ocean. That means only 3 percent is left for 8.2 billion people, which is the population of the world. It also says that Spartanburg County has a minuscule quantity of fresh water. And to be pulling so much water each day means that eventually we will be paying more for water because, as the demand for water increases, so will be the price. I'm going to stay there. Thank you very much.
(Applause)
HEARING OFFICER ELLENBERG: Thank you, Mr. Greene. Thanks for our Spartanburg Auditorium AV for helping with the microphone issue. Yes, sir? Go ahead.

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

MR. STROLL: Good evening. My name is David Stroll. I live on [redacted], about six-tenths of a mile from the data center. And I'm here as a neighbor and a father, and I respectfully ask SCDES to deny the permit as currently written. SCDES says it is dedicated to helping people live healthy lives in healthy communities. Its environmental justice work says no community or neighborhood should be left behind when environmental impacts are at stake. Those commitments matter most when a multi-billion-dollar project asks to place utility scale combustion besides homes. This is not just a data center permit. SCDES's own statement of basis says Valara proposes 517 megawatt turbines and 654 megawatt turbines for continuous onsite power, 409 megawatts of new natural gas generation on top of 24 permanent gas generators already permitted at the site.

For nearby families, this is not minor. It is a fossil fuel power plant beside neighborhoods. The phrase "synthetic minor" may be legal, but the health risk is not synthetic. That classification depends on pollution controls, calculations, testing, and record keeping working exactly as promised. SCDES's own table shows controlled

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

emissions of about 223 tons per year of nitrogen oxides, 202 tons of carbon monoxide, 158 tons of fine particulate matter, 9.39 tons of formaldehyde, and 19.65 tons of total hazardous air pollutants. The uncontrolled numbers are far higher. This permit is only as protective as its weakest assumption.

I support responsible economic development. But a $2.8 billion project that creates at least 27 jobs should not shift its real cost onto nearby families in the form of polluted air, health -- health risks, monitoring burden, noise, and fear.

My children are eight and 11. They live, play, sleep, and go to school within the area of the emissions from this project. So do my nieces and nephews. My parents and my in-laws are in their 70s and they live here, too, dealing with asthma, cancer, and various other health issues. Our neighborhood is full of young families and retired residents. Exactly the people most vulnerable to air pollution. Our health is not an acceptable trade-off.

South Carolina law treats electric generating plants above 75 megawatts as major utility facilities. This project is many times that size.

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

Behind-the-meter power should not erase the physical reality of these emissions. Please deny this permit. Please put people before paperwork. Do not let Spartanburg become the test case for placing a private fossil fuel power plant beside our neighborhoods and calling it minor. Thank you.

(Applause)

HEARING OFFICER ELLENBERG: Thank you, Mr. David. I do want to make sure that we have Michelle Lutke. I don't know that we had her out earlier. Michelle Lutke, and we have Terry Ferguson, Thomas Wright, Vanessa Lech. I'm seeing some people move -- move around. Some are coming towards me; some are maybe going towards the back. I do want to encourage anyone to -- again, please, we continue to receive comments through July 31st. There are a number of ways to share those comments by e-mail, our e-permitting system, by writing a letter. And so please reach out to us if you're leaving and if we have not heard from you tonight. Sir, please go ahead.

DR. FERGUSON: Terry Ferguson. I'm -- T-e-r-r-y F-e-r-g-u-s-o-n. I'm a retired PhD professor in environmental science, and, also, I live 450 yards from the -- from the plant. So my concerns that

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

I'm going to talk about come from both my background and also my proximity to the facility. I'm greatly concerned about the nature and scope of this project. As has been pointed out repeatedly., the hallmarks of this project have not been transparency and truth, but opacity and obfuscation. You know, the -- the permitting -- the initial permitting of this last year again happened -- has been described multiple times today. It was originally a permit for 24 gas generators. Well, that permit was amended this spring to add an additional 21 generators to that. That's 45 gas generators at the plant. Now, we're being asked to add 11 turbines to that. As been stated before, this is -- this is a major power plant, and it's going to produce a major amount of pollution, air pollution, that is going to have harmful physical and mental effects.

I'm concerned about scope creep. We -- we're seeing that now. I mean, what's to prevent, you know, NorthMark coming back next year for an additional 450 megawatts. We're going to be talking maybe, you know, a gigawatt or a gigawatt and a half to, you know, this facility. That's a grave concern.

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

I'm concerned even today, the -- as best I can tell, there have been no environmental assessments done of what was an industrial and military site, and the dust that's been coming off this plant with the massive movement and cutting down acres and acres of trees is -- you know, there's a lot of very harmful chemicals. There were -- there were -- basically, we -- we've already probably been exposed to and there's -- there's no monitoring of that.

I think it is imperative that the responsibility of South Carolina DES ought to be to, if this is going to be a major plant that does, God forbid, get, you know, built, that they need to monitor this plant. The assessment, the ability for NorthMark to send us once a year a report of what they find or what they monitor is not adequate. Thank you.

HEARING OFFICER ELLENBERG: Thank you, Mr. Ferguson. Ms. Wilson (verbatim), do you want to go ahead?

MS. WILLIAMS: All right. Thank you so much. And my name is Saville, which is S-a-v, as in victory, i-l-l-e, Williams with an "s," and I'm actively a candidate for South Carolina House District 34, west side of Spartanburg County. So tonight I

actually want to come here just to speak about the residents, the people who will be impacted if this plant is allowed to operate here in Spartanburg County. I learned some new information tonight, so I had to adjust my speech just a little bit.

I have a question regarding the level of due diligence conducted by the South Carolina Department of Environmental Services before considering approval of the turbines and the generators associated for this project. In the past South Carolina sent a delegation to Missouri to visit and evaluate an ethanol plant, and that was before moving forward with the project. We didn't get that with this type of project. I want to know why we didn't get that level of due diligence, why a delegation was not sent to inspect other plants, listen at the sound, actively talk to the engineers, talk to the residents that live near those data centers, and then come back and make an informed decision. It seems that this moved a little fast and it's being forced down our throats, and I'm not happy about it.

I believe that all of us here -- all of us residents here want to protect our quality of life. We value the natural beauty, our clean air, our

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

forest, our rivers, and our wildlife that make Spartanburg special to all of us. Has the Department of Natural Resources or any wildlife experts been consulted regarding the potential impact of this project? I didn't see them in the lobby. I didn't find anything online. So I'm wondering if they were included in the conversation, if they raised any concerns, and if those concerns were addressed.

Is there any equipment failure? If there's any critical incidents that happened at the former Kohler plant, who is going to be responsible to protect our residents? What's the response going to be? Is there independent oversight that exists? Who ultimately has authority to hold Valara accountable for the actual impact on our community?

As it stands right now, I can't see that any one organization is responsible. The public is being asked to place its trust in this process. The people's trust, our quality of life, and protection of our natural resources are at stake. The decision warrants the highest level of scrutiny, transparency, and due diligence. And I understand that your agency has been asked to approve turbines and generators, not the entire

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

data center, but respectfully, I would ask -- encourage you-all to push back and make that actual delegation visit to another site. Skip the conference rooms. No fancy hotels. Put a tent in the community right across the street from the data center, spend the night, and come back and tell us you will not approve it.

(Applause)

HEARING OFFICER ELLENBERG: Thank you. Do we have Thomas Wright? Vanessa Lech?

MS. LECH: I'm here.

HEARING OFFICER ELLENBERG: Oh, thank you. Come on down. Thank you, ma'am.

MS. LECH: Hi, my name is Vanessa, V-a-n-e-s-s-a. My last name is Lech. It's spelled L-e-c-h. I don't want a data center or this permit approved anywhere where I live or where I work. And I do both in Spartanburg. I also want to point out that it's very clear, because I've been going to a lot of government meetings to include the county level of Spartanburg, that these data centers in general -- general are wildly unpopular and unwelcome. I haven't heard from not one person in Spartanburg come to any of these governmental meetings I've been going to and say that they want a data center

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

here.

Quite the opposite, they've been pleading to get rid of these data centers and to stop them from showing up and taking over the precious natural resources that we need to survive and to live. And I live in the third District, Spartanburg City. There's a lot of quality of life issues there already. A data center's only going to make that exponentially worse. And it's striking to me that, when you pointed out and asked if there's any elected officials here that wanted to stand up and speak, that no one stood up. And it appears that none of them are here, these elected officials. And that really proves to me what I've been saying recently is that there is no real representation in Spartanburg from the current elected officials.

(Applause)

MS. LECH: And that needs to change. I support quality of life, civic engagement. I encourage each and every one of you to run for local public office. And I'm not joking. Because there are people on the city council right now in recent history that are running unopposed, and they're also not here tonight, if you haven't noticed already -- to represent because there's a lack of real

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

representation from our elected officials clearly. And after something big happened a few days ago that I experienced, I decided to run, and I officially launched my campaign for 2027 Spartanburg City Council, 3rd District. VoteVanessaLech.com to learn more. And you should run too. You need to look at your local offices and you need to run. Everyone needs to start running. You don't have to have a history of politician, I've never run before in my life. I've never organized a campaign. I'm just figuring it out. But you need to run too, seriously. If you care, you're here, you need to run. And take these people out of office. Okay? Thank you, and good night.

HEARING OFFICER ELLENBERG: Did we have Warren Bareiss? Eric Allison? Come on down.

MR. BAREISS: Hello my name is Warren W-a-r-r-e-n, Bareiss, B-a-r-e-i-s-s. I live on [redacted], which is about four-tenths of a mile from the building site. My family and I have lived there for 15 years. We're just about to make our last payment on our house so that we would fully own our home. I looked at the picture out in the lobby, the aerial picture of the building site, and I see

my home and how close it is to this place. I feel betrayed by the county leadership.

I worry about my family's health. I worry about the value of my home. I wonder who would buy a house four-tenths of mile from this place. I wonder why -- if this power was needed, why they didn't ask for it on the first round. I don't know what I can say to convince you to stop this expansion, expect -- except to say that my family and many other families are dependent upon you to do the right thing. Stop this catastrophe from getting worse. Please don't betray us again. And -- and I'd like to take about 30 seconds and ask everyone to join me in giving the folks from the state a little -- a little taste of the droning that we're all going to have to hear. So I'm going to drone for 30 seconds, and I hope you will join me too. Ready? 1, 2, 3.

(Audience joins in making noise)

MR. BAREISS: Thank you.

(Applause)

HEARING OFFICER ELLENBERG: Thank you all. Whenever you're ready, sir.

MR. ALLISON: I'm just going to raise this.

MR. BAREISS: Did you record that?

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

MR. ALLISON: Sorry. Sorry. Not used to --
HEARING OFFICER ELLENBERG: Derrick, you might want to stop that clock for a second.
MR. ALLISON: All right. Good evening. My name is Eric Allison, and I'm a proud resident of Spartanburg County. I'm here to formally request South Carolina Department of Environmental Services to deny the Synthetic Minor Construction Air Permit for 11 natural gas turbines requested by Valara Holdings for the South Pine Street site. This expansion -- expansion changes the project from a localized 48-megawatt site to a massive 450-megawatt utility-scale power plant.

A change of this magnitude, an astounding 800 percent increase, requires rigorous scrutiny across three critical technical issues. First, we are told by applicants that regulatory oversight is a straightforward, transparent process. But if you look closely at the timeline of this project, it reveals a deeply troubling pattern of procedural manipulation designed to keep the public in the dark until it's too late.

Let's look at the facts. September 17th, 2025, this body issued an air permit for 24 permanent natural gas generators. That was

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

presented as the baseline environmental footprint. March 4th, 2026, before the ink was barely dry on the original framework, NorthMark quietly turned around and applied for a massive layout overhaul, asking to swap those generators for 11 industrial grade natural gas turbines capable of generating up to 450 megawatts of power.

To make matters more deceptive, and nobody knows about this, while that massive 450-megawatt power plant application was ready sitting on your desk, NorthMark pushed through an amendment to the original permit on April 21st, 2026, just to squeeze in additional 21 temporary generators, almost doubling their current onsite power capacity. This is textbook segmentation -- segmentation. It is a calculated piece-by-piece permitting strategy.

If NorthMark had walked into Spartanburg on day one and announced they were building a massive, heavily polluting, 450-megawatt fossil fuel power plant on the old Kohler site right off South Pine Street, the immediate public outcry and environmental scrutiny would've stopped them in their tracks. Instead, they got their foot in the door with a smaller permit, locked down local tax

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

incentives, and are now attempting a massive bait-and-switch. We're talking about bringing heavy duty industrial turbines that emit nitrogen oxides, fine particular matter, and carcinogenic formaldehyde into an area already overburdened by decades of manufacturing activity in the highly trafficked South Pine Street corridor.

Next, the operational reality of 11 massive turbines introduces immediate opacity and physical environmental risks. Continuous gas consumption at this scale creates persistent exhaust streams. Any start-up or operational deviation will lead to visible smoke plumes, violating state opacity standards. Furthermore, the low frequency acoustic noise and vibrations from a 450-megawatt generation site will destroy the quality of life for surrounding neighborhoods.

Finally, they have applied for selective catalytic reduction units for these new 11 turbines. Operating SCRs at a 450-megawatt scale requires storing thousands of gallons of highly regulated toxic ammonia on South Pine Street. This application completely glosses over the intense localized storage hazard and the risk of ammonia slip directly into our neighborhoods. By approving

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

this permit SCDES would be rewarding a total lack of corporate transparency and validating a process that circumvents meaningful public oversight. This community refuses to be an afterthought. On behalf of the health, safety, and clean air of Spartanburg County residents, I urge you to look at this.

(Shouting from the audience)

MR. ALLISON: Decline the permit.

HEARING OFFICER ELLENBERG: (Inaudible.) Thank you, sir.

(Applause)

HEARING OFFICER ELLENBERG: We also have Bob Glenn, Kenneth Roach, James Jones. Mr. Glenn? Mr. Roach? Mr. Jones?

MR. GLENN: I'll speak from here.

HEARING OFFICER ELLENBERG: Will that work for you, Julie? I think our court reporter --

MR. GLENN: It'll have to. I'm speaking from here. I'm too pissed off to be --

MALE: We -- we can't --

MR. GLENN: -- clutching a mic.

MALE: She can't hear you up here.

HEARING OFFICER ELLENBERG: Can we take a mic to you, sir, to help the court --

MR. GLENN: My name is Bob Glenn. That's B-o-b for the

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

poor spellers. I'm a retired educator. This is people at One Spartanburg who recommended -- folks with One Spartanburg, who recommended this project with local governmental agents. They're idiots. This is an illogical plan. This is an illogical build.

FEMALE: But we can't hear you there.

MALE: We can't hear you though.

HEARING OFFICER ELLENBERG: Please, sir.

MR. GLENN: It's an illogical plan.

(Audience members shouting out)

MR. GLENN: I'm fine. Okay. I got it. I got it. (Inaudible.) Also I'd like to share with those on the county council who made decisions on this thing and said "okay" for this project. They're not only idiots, they are buffoons. Also state governmental agencies who made illogical recommendations to allow this project to proceed: Idiots.

Because this project is illogical, it makes me think that palms are being greased. Now, gifts, cash, money, dark money for anybody and any one of these agencies who has accepted anything, a favor, if you have accepted anything, you have sold your soul to the devil for it (inaudible). And please make some smart -- some wise decisions in the

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

future. Thank you so much for allowing me to speak.

(Applause)

HEARING OFFICER ELLENBERG: Thank you, Mr. Glenn. Bring the mic back up. Thank you, sir.

MR. ROACH: All right.

HEARING OFFICER ELLENBERG: Sir, whenever you're ready.

MR. ROACH: Okay. Good. Well, anyway, my name is Kenneth Roach, and I'm a Roebuck resident here in Spartanburg, South Carolina. And I just want to first of all tell you thank you for having this public forum and this public -- I guess we should call it Town Hall or Public Hearing. I really appreciate that. It's a great opportunity for us to voice our opinions and issues that we have. And I definitely -- it's getting a little later in the night, and I think this probably accumulated to four or five really main issues that's going on here with this -- with this permit process.

But I just want to point out a couple of things that's -- I think is more material issue to the actual permitting process itself that I know that you've got access to actually conduct or actually required to conduct on this permit. The draft statement of basis and fact of the permit on

CP-5000422, and that's -- for the record does not appear to include any detailed environmental justice screening or any robust cumulative impacts analysis. So one of the common themes is the cumulative impact that we've had here in Spartanburg County for past heavy burdens of industry, and the Kohler plant being one of them.

So the question really lies really on -- on two main issues. Has the Department of Environmental Services -- have you guys conducted or actually required an environmental justice analysis or a cumulative impact analysis for this permit? In other words, how has these 11 new gas turbines been assessed of, actually, its impact on existing pollution that's already here in the community and the health risks for nearby neighbors? How much of that cumulative impact can we really actually accumulate to -- to the existing impact that's already here in the community? So -- and if you haven't done it, why haven't you done it?

And those two things are very easily going to be assessed once this permit's actually permitted. I mean, once this permit's approved or not. And actually at the -- the bottom line is -- is will

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

this agency ensure the project does not unfairly or disproportionately harm the communities that are already overburdened by the cumulative effect of pollution and stuff here in Spartanburg? Thank you.

(Applause)

HEARING OFFICER ELLENBERG: Thank you, sir. Do we have James Jones? We have just a few left here. We have the -- in the pre-registration side or those who registered even coming in tonight. So Aiden -- Aiden Kongkeo, [redacted], Tim Brown, Eric Norheim. Yes, ma'am.

MS. [redacted]: I am [redacted], [redacted]. I live in The Oaks a half mile from -- from this power plant -- gas-powered power plant. On behalf of the 25,000 people who live within three miles of NorthMark and in the broader air basin of five miles, 70,000 people, 15 schools with 10,000 students: We beg you to reject this permit.

(Applause)

MS. [redacted]: (Inaudible) I, too, have changed my remarks. In our neighborhood meeting in The Oaks, an important question was asked of the NorthMark team: "Please direct us to centers you are

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

building or have built of similar size." They looked at us, the three NorthMark team members, and said, "We have never attempted to build a center of this size." Make no mistake, this was a private equity deal that will invite and encourage new ownership with additional frightening permit options.

In 1940 when the future of Great Britain was in peril, Winston Churchill responded, and I paraphrase, "We shall go on to the end. We shall fight with growing confidence and growing strength. We shall defend our island. We shall not surrender." We do not have Winston Churchill, but we do have each other, Spartanburg. Together we shall not surrender.

(Applause)

MS. [redacted]: [redacted], [redacted].

Please don't tell NorthMark.

HEARING OFFICER ELLENBERG: No. This record is for SCDES. So thank you for being here tonight. Yes, sir?

MR. BROWN: My name is Tim Brown. I'm a resident of Spartanburg, have been here for 25 years and am a librarian. I just have questions to ask, questions I think that should be addressed before any further

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

work is done on the permitting. The first question is actually on the fact sheet distributed by Valara tonight. It's: Will the facility draw water from local groundwater or aquifers? And its answer here is, "No, the project's large supply will come from the municipal system and is not expected to rely on groundwater or aquifer withdrawals." But my question is: What confidence or comfort are we defined here after learning that its stated expectations as far power needs has increased tenfold in less than one year? So I'd like to point out that it has been documented by South Carolina's leading newspapers, including our -- our own "Herald Journal," that the Spartanburg County Council did not inform the public of the health-related concerns of this data center before voting to approve on Valara's permit.

So related questions concerning the health-related aspects. What has been done to identify the residential communities in the Spartanburg County and greater Upstate that would be impacted by this data center's air pollution? Question 2, who will be responsible for monitoring continually the impact of the data center on these communities' health? And then Question 3, will any environment

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

-- environmental science organization that is not corporate run or profit driven and is non-governmental be involved and involved regularly in this monitoring?

(Applause)

HEARING OFFICER ELLENBERG: Thank you, Mr. Brown.

MS. WADE: My name is Mary Helen Wade. For 29 years, I have lived on [redacted] 0.6 miles from Valara Holdings' gas power plant. I request that the DES of South Carolina deny this air permit application. Valara will be the eighth largest gas power plant in the state of South Carolina. None of the current top ten are located in a suburban infill location, and are instead in rural areas surrounded by forest, rivers, and vast tracks of land and have no schools or neighborhoods within four to five miles. For this gas power plant, three schools are located within three miles and 15 schools within five miles. Notably, the state residential school for multi-handicapped children or the School for the Deaf and Blind is just 1.8 miles away. 70,000 people reside in this five-mile radius around this plant.

I also request that DES look carefully at the potential to emit. Valara's application reveals an

alarming 90 percent pollution control efficiency in order to remain below the major source thresholds. So let's take nitrogen oxides as one example of the plant's nine different air toxins. The uncontrolled emission of nitrogen oxides is a massive 2,106 tons per year. A drop in control efficiency of just 1.6 percent would immediately push the facility past the 250-ton PSD limit. Relying on such a razor thin margin for error is a severe threat to public health, especially given its proximity to our neighborhoods and our schools. Also for perspective, this facility will emit more nitrogen oxide by a factor of seven than the entire 10 million square foot BMW manufacturing complex. And BMW is located on 1,270 acres. This plant is on 260 acres.

Also, I confirmed tonight with Sarah, and you have heard this already from NorthMark, that they have never built a gas power plant and they have never even built a data center. That is scary. This 450-megawatt facility -- did I get my full three minutes? Anyway, it's catastrophic for this community and I hope that you deny the permit.

HEARING OFFICER ELLENBERG: Ms. Wade --

(Applause)

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

HEARING OFFICER ELLENBERG: And, Ms. Wade, again, if you have some written comments, please make sure you share those with one of our staff, for the record, as well. Did we have David Slade Glenn or Nancy Sosbee?

MS. SOSBEE: Yes.

HEARING OFFICER ELLENBERG: Ms. Sosbee, thank you.

MS. SOSBEE: Hello, my name is Nancy N-a-n-c-y, Sosbee S-o-s-b-e-e. I really came out tonight because I'm angry about how the system works. We have planning commissions, zoning commissions, county council meetings, this meeting tonight. We're stretched thin or we would've even more people here. And I'm here now representing over a dozen people who also couldn't come out tonight due to health and other reasons or being elderly with COPD or asthma or other conditions. This is just going to worsen things for them.

And I'm very discouraged because in the lobby I saw the chart the environmental services showed that, on paper, how conservative this place is going to be towards contamination and things. And I don't believe it. When you look at the other states that have these data centers there, even a less scale, the people who speak up around those

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

areas are moving because they're so bad, and this one is going to be a lot bigger scale than that.

So I just hope that -- that we can make some change where environment -- environmental services will not just look at on paper 189, on paper 190, okay, they're over the limit. Now we're going to give them a chance to comply. Okay. They're back down to 189. Those things make no sense when it comes to the pollutants that are in the air that are hurting these people that are so close to the plant.

And I feel sorry for the people who came up tonight and said how close that they live to that. I -- I hurt for them because they -- they put their money into that and it's their home. And I'm a fifth-generation Spartanburg County resident. My family's from here, always been here. We hope to be six generations. And I think to myself, if I were in their position, I would take a loss and move because of my health. I would rather have my health. But that's not really an option for everyone to get out, and eventually it won't be for me. If we had not shut down Spero, I would've been looking for another place to move, too. And sooner or later there will be no place left to go. Please

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

keep these things in mind. Thank you.

(Applause)

HEARING OFFICER ELLENBERG: Let's see. Sir, are you heading towards the mic? Okay. I know we have been calling on people who pre-registered or registered saying they were here, and they want to speak. I want to make sure we're not missing anyone. If there's anyone who still wants to speak, let's just -- let's just come one at a time. And -- like I said, I might be on the wrong spot on the spreadsheet.

MS. RHODEN: Thank you. I pre-registered. My name is Laura Barbas Rhoden, L-a-u-r-a B-a-r-b-a-s R-h-o-d-e-n. I am a resident of Spartanburg County within a five-mile radius, and I am strongly opposed to granting this facility permission to pollute. I'll explain my opposition.

Spartanburg County has thousands of residents whose health is imperiled by worsened air quality. 9.8 percent of people in this county live with asthma. 1,062 people went to the ER for asthma in the county in 2023, and the total charges for those ER visits were over $6.8 million. 9.6 percent of people in this county live with chronic obstructive pulmonary disease. There were 1,080 ER visits for

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

COPD in Spartanburg County in 2023. The total charges for those ER visits were over $27.4 million. Spartanburg County is doing worse than the state value in asthma hospitalizations, COPD ER visits and hospitalizations, heart attack ER visits and hospitalizations, and ER visits for stroke. And their rates have decreased. South Carolina as a state is worse than 22 other states in prevalence of pediatric asthma. Air pollution exacerbates all these conditions, and these conditions cost us millions of dollars in medical bills, hundreds in lost work hours, hundreds in lost days of learning.

Mechanical engineer and former Department of Energy official Jigar Shah has called the idea to power data centers with gas turbines, "a fairytale concocted on the back of a napkin." Because of load volatility, turbine shafts expected to last seven years are degrading in only ten months. What do they emit and at what rate as they degrade? The average data center trying to run off grid, Shah explains, builds extra capacity so that some turbines can be broken and the facility can still run. Again, I ask: What do they emit and at what rate as they degrade?

Spartanburg County residents deserve better

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

than worsened air quality from a fairytale sketched on the back of a napkin. Our residents love where they live. You hear that tonight. And as our South Carolina state motto says, "While we breathe, we hope." Let us breathe clean air. Thank you.

(Applause)

MR. GRIFFIN: Hello, my name is Daniel Griffin. D-a-n-i-e-l G-r-i-f-f-i-n. There's a few things I want to talk about. The first is that -- is that, according to state federal law, the Utility Facility Siting in Environmental Protection Act, this facility that we're building is a major facility because it produces more -- it is capable -- is designed for/capable -- operates a capacity of more than 75 megawatts. They have not gotten the permitting from the Public Service Commission that they are supposed to for this.

More importantly, I'm a person with asthma. And I can tell you it sucks. It is not fun. If this goes through, if this plan gives an increased capacity, the cost will be on everyone else. This, because of the tax breaks announced, does not benefit the county, does not benefit the city, does not benefit the state. The only person that this will benefit is those that own this corporation.

The only one in the end this will benefit is those people that thus have decided not to named. And this will hurt everyone here. This will hurt everyone in the city. This will hurt the people that live nearby. In the long term, this benefits nothing but that.

As a state agency, the Department of Environmental Services is supposed to protect us, is supposed to protect the people of the city and most importantly, the people who live nearest where this type of pollution can happen. If they do not respond to what is essentially a legal act, then they leave their service of a protector and leave it up to us.

The only reason why this meeting is probably happening at all is because there's been major public outrage. Outrage that the corporation tried to hide so this wouldn't happen. Thank you very much. Have a good day.

(Applause)

HEARING OFFICER ELLENBERG: Sir, would you go ahead?

MR. MCDONALD: Hi. My name is Frank McDonald, F-r-a-n-k-l-i-n, Franklin, McDonald, M-c-D-o-n-a-l-d. And I'm a retired, disabled Marine and Gulf Wars veteran. And I had my

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

daughter who was born in California near the San Onofre nuclear power plant and power lines were running over our house on base. And she ended up getting petechiae all over her body. So we took her to the doctor. It turned out she had leukemia just from maybe two weeks of being under these power lines. And she died from leukemia.

And then I retired from the Marine Corps, moved out here back to South Carolina where I grew up. And my daughter -- second daughter we had was fine until, you know, a few years after being here, she developed asthma. And now I'm living in Pacolet. I finally talked to my daughter, who got married, into moving back to South Carolina with our grandchildren and her husband. And now I'm finding out that they're going to be exposed to all this stuff, and it's just not worth it in my opinion for anybody.

I understand that this county council or whoever decided to do this for whatever reason, I think it's time we start thinking about a recall of everybody in office.

(Applause)

MR. MCDONALD: Because this is -- it's sad to be doing stuff like this. And if it takes more than just

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

whatever legal terms they have to do this, we need to do it. But in the meantime, I ask that they do not approve any more increase on this site. And please, finally, do away with this site. Thank you.

(Applause)

HEARING OFFICER ELLENBERG: (Inaudible.)

MS. MULLEN: Hey. My name is Natalie Mullen. And I'm lifelong resident from Spartanburg County, and it is about my bedtime, but this is important enough to me that I'll stay up past my bedtime and talk about it. And I'm here mainly as a concerned citizen, but also as a concerned parent. And I think, like Frank McDonald just said, mainly -- my main reason is about the health of my family and the health of citizens of Spartanburg. My husband Steven and I, we live in Pierce Acres, which is about three miles from the data center. But 2 1/2 years ago, we bought property at [redacted], which is, Dr. Pack, you said about 400 feet from the entrance of -- of the data center. We were right across the street from Dr. and Janice Pack.

We bought that property for -- mainly to house my husband's construction business. And -- but then last month our son graduated from Wofford

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

College, and he has moved into our house on that property. So now I have to worry about my son living 400 feet from this data center. So I worry about his health and wellbeing.

I also am the school counselor at Pine Street Elementary School. Been there for 28 years, and I have 625 students there in my care. And so I worry about them and their health and like I know we had a teacher from the School for the Deaf and Blind and [redacted] talking about schools around this data center. So I'm very concerned about that in regards to this. So I ask that DES please do not allow the permit for more power at this data center.

I would also like to ask for DES to go back and void the permit that they already approved in September 2025.

(Applause)

MS. MULLEN: It is not too late to right a wrong. I love where I live, and I want to continue to love where I live. Thank you.

HEARING OFFICER ELLENBERG: Ma'am, can I get your last name again? I'm sorry.

MS. MULLEN: I don't think I spelled it.

HEARING OFFICER ELLENBERG: I -- I missed it.

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

MS. MULLEN: Mullen, M-u-l-l-e-n.

HEARING OFFICER ELLENBERG: Thank you, Ms. Mullen.

MS. MULLEN: Natalie. I appreciate that.

MS. GILLESPIE: Okay. Hi. my name's Lynne Gillespie, L-y-n-n-e G-i-l-l-e-s-p-i-e. I'm a long-time resident of Spartanburg. And I want to ask y'all a very simple question. Who actually benefits from this project? When a typical power plant is built, it provides electricity to the public grid to keep the lights on in our hospitals, our schools, and our homes. But this 450-megawatt natural gas plant is entirely private. It is being built for one purpose: to feed 11 power hungry turbines that generate electricity solely for a high performance computer data center.

The community of Spartanburg gets all of the pollution, all of the environmental degradation, and absolutely none of the power. Data centers are notorious for creating almost no long-term local jobs once construction concludes, yet the environmental costs we are being forced to pay is permanent. The plant will inject 778 tons of net new pollutants into our immediate air corridor every year. It will compete -- it will compete with our residents for hundreds of thousands of

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

gallons of water a day.

The location on South Pine Street sits right next to the residential neighborhoods. It is -- if this is built, local property values are at risk. Noise pollution from continuous turbine hums will disrupt families. And our local air quality index will frequently spike the unhealthy zones during the summer. Just months ago, our neighbors successfully fought off a separate $3 billion data center project on the -- in the Tyger River area because the community said enough is enough to resource exploitation. Our county council listened and paused the data center applications.

We do not want to be a fossil fuel sacrificial zone so an out-of-state tech company can run AI algorithms. We live here; we breathe here. I urge the DES to stand with the citizens of Spartanburg and deny the permit. We are tired of being lied to. We know what county -- that county council sells us out. We're through with that. Please don't do this.

(Applause)

HEARING OFFICER ELLENBERG: Thank you, Ms. Gillespie.

MR. WATTS: Hello, I am Frankland Watts. I'm a resident of Wellford, South Carolina, and I am also the

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

Democratic nominee for County Council District 6. And I thank you so much for being here today. I am here to express serious concern regarding the proposed permit from NorthMark Strategies for additional natural gas turbine development, a permit that will forever leave a stain on our community. This project combined with the previous approved permit, would operate dozens of gas-powered turbines and could exceed the scale of the largest power generation site in Upstate South Carolina.

Your own materials identify pollutants associated with these turbines, so let's go through those. Sulfur dioxide, nitrogen oxide; both gases are recognized by you, the Environmental Protection Agency, the National Institute of Health, and the American Lung Association as a highly toxic gas. Even the small amounts can affect respiratory issues, disproportionately impacting our seniors and children the most. Environmentally, these chemicals destroy our vegetation and acidifies with contact -- with water contact, impacting our lakes, streams, and reservoirs. And formaldehyde, also, a highly toxic chemical where exposure can lead to burning of the eyes and the skin. The EPA and the

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

World Health Organization both identify these chemicals as a Class 1 carcinogen. These are only some of the pollutants that you have identified would be emitted.

Our community deserves better. This center will leave a legacy on our Spartanburg County and surrounding areas. A legacy of despair, hopelessness, and hardship. A legacy where our most vulnerable are impacted, and where the few elites at the top benefit from the so-called AI boom. As a public agency funded by us, the taxpayers, I hope you weigh these impacts and actually consider protecting the environment and decline NorthMark Strategies' exploitative permit. Thank you.

(Applause)

HEARING OFFICER ELLENBERG: Can I get you to repeat your name and spell it, please?

MR. WATTS: Frankland, F-r-a-n-k-l-a-n-d, Watts, W-a-t-t-s.

HEARING OFFICER ELLENBERG: Thank you so much.

(Applause)

HEARING OFFICER ELLENBERG: Go ahead, please.

MR. KING: All right. Hi. My name is Colby King. I am a sociology professor at USC Upstate, although I'm

not here speaking on behalf of my employer at all. I live here in Spartanburg. I've got a wife and two kids who are both set to go to Pine Street Elementary just down the road from this illustrious data center that we're being told about. I am concerned, like so many others here, about the data center. I do want to say I am -- I want to speak on how I'm disappointed that I did not see any of the elected representatives who are purported to represent me here tonight. I didn't see my city counselor, my county counselor, my state representative, or my state senator here. And I am frustrated, disappointed about that. I think they should be embarrassed and ashamed. I think we should bring shame back to politics.

(Applause)

MR. KING: Thank you. I -- I want to say I'm a -- I'm also the son of a steel mill worker. My dad worked for 30 years maintaining the furnace in a steel mill in Butler, Pennsylvania. Shortly after he retired, he developed esophageal cancer. He had an esophagectomy on my birthday during COVID. An esophagectomy is a massively invasive surgery where you like lose a third of your stomach and a third of your esophagus, and they reattach it. So that's

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

fun. He survived, which is amazing.

But I just -- as we're talking about health issues and air quality, I think it's important to put personal stories on the health issues. The pollution is not just a little bit of extra dirt in the air. It's stories of people living with emphysema, living with COPD, living with cancer, dealing with cancer. My father-in-law currently is -- has Stage 4 lung cancer. He's miraculously found a drug that has held it at bay for a few years. His father died of emphysema. My -- and my grandfather also died of emphysema. I was talking with him just a couple weeks ago, my father-in-law, about his cancer. We -- we were at the beach down in Myrtle Beach, and he said his dad used to take him to the beach all the time when he was a kid because the -- the ocean air, he said, helped him deal with his emphysema. And I told my father-in-law about my grandfather having emphysema and how he, like, slowly died from suffocation -- basically self-suffocation.

And my father-in-law, who has been dealing with Stage 4 cancer for multiple years, said, "Yeah. Emphysema's really terrible. There are things worse than cancer." And it's just bad. So

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

I want to -- I want to say with this, as a resident of our community, but also as a sociologist who knows these things, every day we have the opportunity to recreate the community we live in. We choose every day what kind of community and city and region we want to live and work in. So let's make sure we all do it together. Thank you.

(Applause)

HEARING OFFICER ELLENBERG: Thank you, Mr. King. Go ahead, sir.

REVEREND BROWN: Good evening. I'm the Reverend Rob Brown. That's R-o-b B-r-o-w-n, and I did register out in the lobby. I live in Glen Forest, less than one-half mile from the data center. This is just a whole series of questions that I'll also send you on an e-mail.

HEARING OFFICER ELLENBERG: Thank you, sir.

REVEREND BROWN: The American Lung Association states there are approximately 50,000 people in Spartanburg County who suffer from asthma and COPD. According to studies done by the Harvard School of Public Health and University of California Riverside, air pollution that is released by data centers have a significant impact on folks dealing with these issues, particularly children with

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

asthma. And even using the data that Valara Holdings/NorthMark provided to the South Carolina Department of Environmental Services, the data center will be releasing significant amounts of particulates into the air. Since NorthMark will actually be policing itself, and even the charts they provided show particulate in some cases, one-third to two-thirds of the maximum allowed under normal operation, that means overages will place them in violation, presenting a public health hazard, if we ever hear about it.

What does NorthMark, our South Carolina Department of Environmental Services, the Public Service Commission and our county council that signed off on this deal say to families living in the area around the plant, who have family members, particularly children with pulmonary issues? Also -- and this might be the first time this has been brought up -- data centers often negotiate lower rates with utility companies due to their high usage of, in this case, natural gas. The end result being residential users and businesses end up facing higher rates to offset the deals given to data centers. Has Valara Holdings, that is NorthMark, negotiated lower rates on natural gas

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

from the local provider? And has construction already started on the increased number of generators, despite permission having not yet been granted? If they have, is this a violation of the law?

Also, at present, recycled water is not permitted legislatively in South Carolina for cooling of data centers. So every day we'll be using water from our reservoirs, which is actually taking advantage of local runoff and aquifers, that otherwise be available to residential customers, institutional users such as hospitals and schools and small businesses. How can we be assured everyday water usage, particularly during periods of drought, will not be impacted?

As to noise level. They list 34 total generators at 70 decibels each, 34 operating at 70 will produce a cumulative noise level of approximately, not 70 decibels, but at 85.3, which is above the Spartanburg County allowed levels. Will the county monitor this and enforce regulations? The actual ordinance is this: "Disturbing the peace threshold: Noise exceed the ambient background noise by 10 decibels or more can be legally cited." Law enforcement uses a sound

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

meter to take a reading of the complainant's property line and compares it to a reading after the noise stops. And so this is for our county council who, again, none of them are here. They're going to be the ones that are going to have to enforce this if they choose to. Thank you.

(Applause)

HEARING OFFICER ELLENBERG: Thank you, Reverend Brown.

MR. GRIFFIN: I'm Shawn Griffin, a resident of Spartanburg County, a student of SCC. I attended the teleconference yesterday and was not able to get my questions answered. I -- a lot of people here have -- experienced people that have talked about the environmental and health impacts of the data center. On NorthMark's website, it says that the FIOT -- FILOT clearance, you know, fees in lieu of tax, continue until 2045. Let's say conservatively that they'll keep running the plant until their tax breaks run down. How are we supposed to live in a sustainable future when greenhouse gas-producing 450-megawatt power plants running 24/7 like Valara South Pine contribute to anthropogenic climate change and global warming? Thank you.

(Applause)

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

DR. NEWBERRY: I got to --
HEARING OFFICER ELLENBERG: I would have to adjust that mic, too. Yes, ma'am.
DR. NEWBERRY: I'm Dr. Gillian Newberry, G-i-l-l-i-a-n, Newberry like the county -- the -- the county/the college. I have received a PhD from the University of Wisconsin. My master's thesis was on the effect of a sulfate processed paper plant on the -- the environment surrounding that plant. And what we're missing here is that this SO2 is not being distributed equally. We're all not getting our bag of SO2. The -- the -- the -- my data showed that it took 20 miles downwind from the sulfate process paper plant before the vegetation returned to a semblance of normal. Those that lived on the other side that didn't get the wind-driven pollutants were marginally successful two to five miles away. So that means that you need to look at where this SO2 is going. It's not going distributed equally. There's some people who are going to be fumigated literally out of their homes.
(Shouts of "Wow" from the audience)
DR. NEWBERRY: That's all I've got to say.
(Applause)
HEARING OFFICER ELLENBERG: Thank you, Dr. Newberry.

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

MS. NEAL: My name is Carmen, C-a-r-m-e-n, Neal, N-e-a-l. I'm a resident here. I've been here 14 months. I'm excited to get here. And about a month after I got here, we passed by this gigantic beast being built. And they started clearing the trees and said -- I was shocked. Anyway, I got a question. If you're -- we just voted, everybody, so -- and we might not have got all the government and congressional people we wanted and the folks we need in there. But don't worry, we all got eyes on -- eyes. Everybody get out your binoculars. Start watching county council, government, everybody.

I -- I got a question about the agriculture. What about the cows and the chickens? Some of the farmers say they can't get new calves and new -- all that. What about food? Meat? Chickens? eggs? What about these kids coming up? What about all these animals and things that are getting destroyed and stuff going on? Just asking. What about the kids playing soccer down the road? It ain't far from here, that park. There's a lot of deaf kids that play that, too. But think about their ears. They got one deficit. You don't. You're hearing me. They got it.

Guess what? All this noise, 24/7 keeps going,

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

guess what happens to the next set of kids and the next and the next? What about the aquifers? If y'all going to mess with them or not? Valara, if you're listening, where are you getting refills for it? I want to know when you're putting it back or where you're getting it. Because when our water runs out, what do we do? Our electric and water bills, if they go up, how much they going to go up? Because I know you're passing it on to us. You've got a discount from the Duke Energy or whoever. I want to know how much you're passing it on to us. Medical bills. Think about the hospital even after us. What about all the -- the awful things that's going to happen to everybody coming in there to get -- that's sick or things and diseases and stuff. Lots of bills. What about the community when they move away? What about the money? Where does it go? You pay -- your paychecks. People sitting here, all these representatives, where does it go? Because when people move away, city's population goes down, city's things close, doors closed. Come on.

I got a granddaughter, she's seven months old. I told her my daughter, "Don't move her here because we have sneaky county council that does

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

things behind the resident's back like this massive beast." I got another question. Who's -- who -- I ain't going to say that one. The road's being fixed -- got -- well -- road's being fixed? You put money to that. Okay. Good. They just did it right before we voted. Was it to help get all these trucks in here? Because when they start bringing supplies to this massive beast, they're going to tear them up again. So last but not least, who -- how -- county council and everybody, how -- how do you put your head down on pillow at night knowing the harm you're bringing to us? One more thing . . .

(Time expire)

HEARING OFFICER ELLENBERG: Thank you, Ms. Neal.

MR. GIBSON: Hello. My name is Garrett Gibson. And I have nothing prepared, so don't expect this to be eloquent. That's two Rs and two Ts, by the way.

I want to say first thank you for being here. I'm not upset at NorthMark at all. I've never known, nor do I expect a corporation to put people over profit. The people I do expect that from are our elected officials, because all this should have been done a year ago. That's one reason I've decided to run for County Council District 5.

Now, I want to point out some people that are noticeably absent tonight. I'm not talking about the people who left earlier, the people who couldn't make it. I'm talking about children. I'm talking about people with severe disabilities, talking about the elderly people in nursing homes, people who couldn't be here to speak for themselves, but who this decision is going to affect nevertheless.

A long time ago, not so long ago, really, a lot of people were asked to take a certain vaccine that they felt they didn't know enough about. Now, whether you took it or not, none of us here wanted to put something in our body that we knew nothing about. Why would we want to put a hyperscale data center in the heart of our community when we know nothing about it and when it has been shoehorned in without transparency? And again, I'm not just blaming NorthMark for that. I'm blaming our county council because we should have known this a year ago so that we could have made the right decisions.

Now, I don't know if y'all have seen where the data center is, but it is within just a few miles of schools. I don't know if y'all know -- we're in Spartanburg County. There's a lot of churches.

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

There are a lot of churches around this data center. There are a lot of people who can't speak for themselves who this is going to affect. So all I want to leave y'all with is this: For every person who is here tonight, for every person who's spoken, there are many, many people who can't speak for themselves that we are representing the way that our elected officials should be representing us. Thank you.

HEARING OFFICER ELLENBERG: Thank you, Mr. Gibson.

MS. BURROW: My name is Ashley, A-s-h-l-e-y, Burrow, B-u-r-r-o-w. I'm going to continue on with some of what my daughter was saying earlier. We do have to put more sustainable options and pressure on billion-dollar companies such as this. The budget for this mystery data center is $2.8 billion. To put that into perspective, 2.8 million seconds is about 33 days. 2.8 billion is about 88 years and 266 days.

We constantly experience heat spikes and droughts that affect the daily lives of every resident, particularly our farmers who produce our city's food, and natural disasters turn to climate catastrophes, drowning entire towns. And it is inexcusable to permit any project of this size that

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

does not even try to incorporate some attempt at renewable energy. The proposed over 400-megawatts of energy could power up to a half million homes. This is not a small amount of resources being used. With a one-megawatt premium solar farm running about $1.5 million, a 400-megawatt solar farm would cost approximately $600 million, less than a quarter of the budget that there suggesting. While I understand this would require a large amount of land, there is no excuse for not even covering the rooftops in high quality solar panels, not asking for perfection, asking for progress. If 100 percent renewable energy is too much, even as little as 20 percent is far better than zero.

With as -- sorry -- with as severe and widespread as the health effects around each data center are, we cannot rely on the goodwill of corporations to fulfill fake promises.

And one thing I would like to add is I feel like a lot of these billion-dollar corporations around our country see South Carolina as just full of a bunch of backwoods illiterate rednecks. And we have to stand up and show them that is not who we are.

FEMALE: That's why they're comfortable treating us like

this.

(Applause)

HEARING OFFICER ELLENBERG: Thank you, Ms. Burrow.

MS. HANE: Hi, my name is Emily Hane. That's E-m-i-l-y H-a-n-e. Plenty of my fellow -- I've lived in Spartanburg -- or I've lived in South Carolina my whole life, and I've lived in Spartanburg my entire adult life. Plenty of citizens have already emphasized the risk to our health this air pollution will cause. So I'm not going to add to that, but I would like to say that I work at a local pulmonary clinic, which means the respiratory system. I don't speak for my employer, and I'm not a doctor. We serve a massive area spreading even into Western North Carolina.

The reason we serve such a large area is because there are not enough lung doctors in Upstate South Carolina. We have been struggling to recruit lung doctors for years. We struggle to keep up with the patient base we have, as is. There are only two pulmonary clinics in Spartanburg. I am concerned that, when this data center inevitably negatively impacts our citizens, we will not have enough providers to treat them. I would like to ask the employees of DES to consider

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

what the value of your lungs are and if they are worth less than whatever money the power plant will bring in.

Also, I'm sick of my beloved South Carolina being the dumping ground for the rest of the country just because we have less money. If this data center is so great to live near, let NorthMark build it in Dallas in their backyards where they're headquartered. In fact, a lot of people who have been promising this data center is great do not live in Spartanburg.

DES promised to supervise this, but how can we trust you to do that when you didn't even tell us this was being built until ground was already broken? It is clear all you care about is money. All my faith in you has been lost, and it'll be a very long time for it to be rebuilt. A nice way to start would be denying this permit. Thank you.

KRIS J.: Hi, my name is Kris J., that's K-r-i-s. Just the initial J for the last name. Our family frequents Camp Croft State Park. That state park is less than nine -- nine miles away from this proposed facility. And if I go to Southcarolinaparks.com, which I did because I'm a responsible citizen, and I look at what I'm allowed

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

to do at the South Carolina state park that I'm enjoying, I am told that it's an unlawful act in the State of South Carolina to go to a South Carolina state park and dump any waste, including gray water. Gray water is what comes out of my washing machine, my shower, and my kitchen sink. That's perspective.

Now I'm an educator. We all know what the water cycle is if we went to school. The water cycle starts with water droplets condensing on particles in the air, which form the clouds that our rain comes from. So if we have not proven beyond reasonable doubt that all of these contaminants that have been cited by very professional people -- if we have not concluded that they are not going to become part of the water cycle and dump on Camp Croft State Park, then DES is breaking South Carolina state law. It's an unlawful act. And so I need to inform you as a citizen of the State of South Carolina that voted for these laws that you are now violating Title 51, Chapter 3, Section 145 of the 1976 Code of Laws of South Carolina violations, and you are guilty of a misdemeanor, and upon conviction, you can be subject to fine and imprisonment. And that's my

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

responsibility as somebody who voted for the laws in the State of South Carolina.

(Applause)

MR. GILLESPIE: Max Gillespie, not related to the other Gillespies, but M-a-x G-i-l-l-e-s-p-i-e. I do have one small business that is a air quality assurance. And one thing I -- I don't know y'all's processes, but do you have a baseline? Every time I do testing, I do a baseline test and a follow-up test. Also, a lot of the measurements -- what I do not know: Are the measurements by individual turbine or is it a cumulative amount of output? Also on the -- on these outputs, is there a measurement based upon density of population? You would think, as a more dense population, the output would have a bigger or more significant impact.

Also, are y'all regulating -- if I'm not mistaken, you have to have diesel backup generators that have to be fired up at least twice a month, if not four times a month, to make sure they're regulated. Are those also regulated?

And I know you're not responsible for sound, but the one thing that really hit me that I didn't even think of is about the sound. We have one school in this state for the deaf and blind, and

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

those deaf students are not very far at all from that facility. And not being able to hear with that constant noise will drastically affect their quality of life. And that is the one school we have in South Carolina for the deaf.

(Applause)

HEARING OFFICER ELLENBERG: Thank you, sir.

MS. BREITENBACH: Hey. I did pre-register. My name is Stephanie Breitenbach, B-r-e-i-t-e-n-b-a-c-h. Thank you-all for allowing us to speak tonight. The purpose of the South Carolina Department of Environmental Services is to safeguard the state's air, land, water, and coast ensuring a resilient, sustainable, and thriving environment for all South Carolinians. I am begging you to fulfill your agency's purpose and protect Spartanburg County and our beautiful state. Please deny this permit. It is never too late to do the right thing. Thank you.

HEARING OFFICER ELLENBERG: Thank you, Ms. Breitenbach.

MS. NEAL: If I have a question for Valara, can I ask it or no?

HEARING OFFICER ELLENBERG: Was that for a question?

MS. NEAL: Yes, ma'am.

HEARING OFFICER ELLENBERG: I think we're -- we want to

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

make sure -- hang on one second. Can we just check in with the group to see is there anyone else who wanted to make a comment tonight that has not already done so?

MALE: Let her ask the question.

MALE: Yeah.

MR DUNLOP: This is going for the record. This is going to us, not Valara.

HEARING OFFICER ELLENBERG: I was going to say again, we're -- we're here to -- to listen tonight, but . . .

MS. NEAL: I'm Carmen -- again, Carmen Neal. I got a question to Valara or whatever the company. How come they don't talk -- this might seem stupid, but I'm going to ask it. The teacher once told me it's never a stupid question. How come they don't -- like him or hate him, it's not a party affiliation thing. How come they don't call Elon Musk on this? Because in space, isn't it cold so they could cool it? So that would help with the water. The wi-fi, they already had satellites up there, so you can Google and do your AI. I mean, they found water up there and stuff, too, so why not talk it over with him and see: Can't you put data center up there? Thanks.

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

HEARING OFFICER ELLENBERG: Thank you, ma'am.

(Applause)

MR. CRAWFORD: My name is William Crawford, W-i-l-l-i-a-m C-r-a-w-f-o-r-d. I would like to just stand here in front of the -- the audience and recognize that I understand that some members of this audience have concerns about me. I'm the Republican nominee for Chairman of County Council, and I wanted to hear -- and I appreciate DES putting on this hearing or -- or the feedback session. And I wanted to come and listen because I wanted to learn. I wanted to understand and -- and really listen. And my heart goes out to those individuals that are faced with uncertainties of being up against this project.

So I appreciate everybody coming out tonight. I appreciate DES putting it on. A lot of concerns, and I hope we can do better with our government as far as transparency, and I hope that you give feedback and clarity to whatever the decision is that you've made here tonight. Thank you.

HEARING OFFICER ELLENBERG: Thank you, Mr. Crawford. Is there anyone else who would like to make a formal comment for the record?

MR. WHITENER: Yeah. I'd like to make one.

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

HEARING OFFICER ELLENBERG: Yes, sir.

MR. WHITENER: My name is David Whitener, D-a-v-i-d W-h-i-t-e-n-e-r. I appreciate the opportunity to speak tonight. I wasn't going to speak, but I do want to let these folks know that I know about poison. I was in the Vietnam War. I was poisoned by Agent Orange. I have ischemic heart disease, and I had a triple bypass in 2021. And so I know the effects of poison.

What we've been talking about tonight is poison, and that's what's going to happen to you folks that have problems already. And when you get to be my age, I've been in Spartanburg County for 73 years. I'm in pretty good shape now for the shape I'm in. But the -- the -- the point is, if we don't have to have it, why do we have it? So how did we get here?

All right. So I'm going to ask you some questions that I know she can't ask. I'm going to ask her. I'm just going to say it because I don't want to get sued. So I'm going to put it in a question form. So did One Spartanburg know that these data centers were coming here? Both of them. And did the county council know beforehand? Why did they not tell us that they were coming before

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

the permit applications were put in?

So that upsets me. I was a -- a candidate for Chairman of Spartanburg County Council. Mr. Crawford happened to have won that nomination. He'll be facing somebody in November. He may be facing more than he knows, but the fact of the matter is there's a lot of affairs, in my opinions -- activities that have been going on and there need to be addressed. And I have two postgraduate degrees. I have a doctorate. I have a child that's a family physician, and we have discussions about these particulates and other aspects of this particular unit that's going in over here on Pine Street. And we have great, great, deep concerns. We think it is a -- a monstrosity. We think it's diabolical.

We know that you're not going to profit from it. We know the investors are. And that's all the ones that's going to profit from it. It's going to be damaging to the rest of us. And we've heard people here that have a whole lot better education I have tonight who have PhDs in chemistry and so forth, and they've made their case, I believe, and I appreciate that you vote no or vote it down or not permit these permits to be allocated to this

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

particular data center. So we can live in peace and have a good quality of life in Spartanburg. Thank you.

(Applause)

HEARING OFFICER ELLENBERG: Do we have any others that would like to speak for record tonight? I'm seeing some people on the move. If you're coming this way, maybe just raise your hand and let me know. Thank you. I believe we have a gentleman here.

MR. DAVIDSON: I'm Carlos Edward Davidson. Don't I look like a Carlos? I'm a resident of South Carolina, born and raised. Went to high school here at Byrnes High School. I wish that DHEC could have ridden down the -- the -- the alleyway into -- down the alleyway into -- into Startex when I was in high school. If you went down that -- by the river, some days it'd be red, some days it'd be green. Occasionally, it'd be blue, not water blue, but dye blue. Because the textile industry was dumping all of their dyes into the -- into the water.

I would ask that you deny this dumping into our atmosphere. We don't know what it's going to cause, and you have the ability to do it. Grow a set of testicles and do something, DHEC.

(Applause)

HEARING OFFICER ELLENBERG: Thank you, Mr. Davidson. I'm going to see what we can -- you know, I've -- I've been really successful with the tech all evening. So we're going to see what I can do with this timer right here since one my colleagues went to the rear of the room for a moment.

Are there any others who would like to provide a comment tonight? Hold on one moment.

But before we do the official closing, I just -- I just want to reiterate again, I'm -- I'm from our community engagement team, and -- and I told you at the start of the night that we came here to listen, and that's what we have been doing. So I appreciate everybody being here, staying here for the duration of this, being able to share these comments for with us for the record. It's going to be part of our process going forward to keep reviewing these, put that into consideration, and it's something that's going to be very meaningful for us. So thank you so much for being here and allowing us to listen.

So seeing no additional requests for someone to speak, our oral comment portion of tonight's public hearing will now be concluded.

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

Again, on behalf of the South Carolina Department of Environmental Services. I want to thank everyone for attending and participating in tonight's hearing. I'd also like to reiterate the following: Any comments that have been shared tonight or comments previously submitted are already part of our official administrative record, and we appreciate everybody who has done that.

There's that buzzer. Look at that. I thought I turned it off, Derrick.

The written comments that are provided tonight, please make sure you're leaving them with one of our DHEC -- or now DES staff, forgive me, that are here tonight. And then additional comments may still be submitted online through our SCDES e-permitting public notice webpage, by e-mail to airpncomments@dessc.gov or by mail to the SCDES Bureau of Air Quality at 2600 Bull Street Columbia, South Carolina 29201.

I want remind everyone and you can share this with others who aren't here tonight as well, but that extended public comment period will remain open through July 31st, 2026. So all timely oral and written comments are reviewed and considered by our Department as it makes its decision and

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

continues moving forward regarding the draft permit.

The time is now 10:06 p.m. and our public hearing is now adjourned. Thank you and please travel safely.

(Whereupon, the hearing was concluded at 10:06 p.m.)

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ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

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STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

CERTIFICATE

Be it known that Julie Taradash took the foregoing proceeding and hereby attests:

that I was then and there a notary public in and for the State of South Carolina-at-large and that by virtue thereof I was duly authorized to administer an oath;

that the deponent/witness, if any, was first duly sworn to testify to the truth, the whole truth, and nothing but the truth, concerning the matter in the controversy aforesaid;

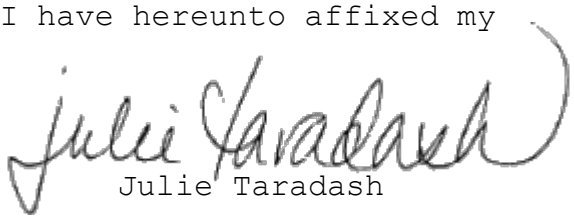
that the foregoing transcript represents a true, accurate, and complete transcription of the testimony so given at the time and place aforesaid to the best of my skill and ability;

that I am neither a relative nor an employee of any of the parties hereto, nor of any attorney or counsel employed by the parties hereto, nor interested in the outcome of this action;

that, if a recording of an event was supplied by another party for purposes of transcription and I was not present during that event, the foregoing pages were transcribed to the best of my skill and ability; additionally, any identifications of speakers were provided to me by the party supplying the recording;

that, in the event of a nonappearance by the witness, the foregoing details for the nonappearance are accurate.

In witness thereof, I have hereunto affixed my signature and title.



Julie Taradash

Date: 7/9/2026
Notary public for South Carolina
My commission expires March 27, 2035
*Unless otherwise noted, this notary public administered the oath. Please refer to the transcript for any exceptions.
**For details on reading and signing, please refer to the transcript.

JOHNSON EXHIBIT 13

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

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NORTHMARK
STRATEGIES GROUP

MENU

ANNOUNCEMENT: MAY 06, 2026

A Message to Our Spartanburg Neighbors

Spartanburg's hardworking people, strong values, and promising future are why NorthMark Strategies chose this community. We intend to be a responsible, long-term neighbor.

In early 2025, we acquired the former Kohler site on South Pine Street and made commitments to County Council, OneSpartanburg, and the state of South Carolina. We continue to stand by those commitments: thorough site rehabilitation, responsible use of resources, meaningful tax revenue, job creation, and ongoing community support.

We'd like to share an update on our progress one year into the project.

Project Scope and Approach

NorthMark Strategies is building a High-Performance Computing facility to meet our internal demands. After evaluating locations nationwide, Spartanburg stood out for its talented and hardworking people, strong values, and supportive business environment. We're proud to invest in the community's growth and we intend to be here for the long term.

Large projects like this move forward in phases, a standard approach in South Carolina. Permit applications reflect that phased approach and are consistent with the project scope originally presented to local and state leaders.

Early Site Improvements

Before construction, we voluntarily addressed environmental conditions tied to the site's industrial past. We are supporting the county by providing right-of-way access for planned safety improvements at the intersection of Dogwood Club Road and Route 176. This work benefits those working on the site and the broader community.

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4204416

Power Generation & Grid Impact

We will not rely on grid power; our facility is designed to generate power on-site using natural gas equipment. While broader utility rates and regional demand are outside of our control, this self-generation approach is specifically intended to limit impact to local electricity bills.

All on-site generation will meet or exceed state and federal air quality standards. We will voluntarily install emission reduction equipment and continuous real-time emissions to monitor our power generation equipment.

Water & Environmental Stewardship

Our site operates under the same municipal water permit as the prior Kohler facility. Projected water use remains within approved limits and is sourced entirely from municipal supply with no draw from groundwater or aquifers. All discharged water is treated on-site before returning to the municipal system in full compliance. We are not requesting additional water capacity.

Economic Contributions

The site previously generated around $480,000–$507,000 in annual property taxes. Our investment, supported by the FILOT agreement, is projected to generate (based on current capital investment milestones and subject to final assessments):

- 2026: **~$10.5 million**
- 2027: **~$12.9 million**
- 2028: **~$13.9 million**
- 2029: **~$15.0 million**
- Onward: **~$15 million per year through 2045**

Through these tax contributions, we are proud to support schools, public safety, infrastructure, and services for years to come.

Jobs and Local Economy

Construction has brought hundreds of workers to the site (currently around 1,445 workers daily), with roughly one in three from Spartanburg County. We direct

contractors toward local spending and prioritize Spartanburg-area suppliers wherever possible.

At full operation, we expect approximately 150 permanent roles on-site. These are mostly skilled, higher-wage positions in maintenance, trades, and technical operations. We are actively supporting local STEM education and workforce development partnerships to help build talent pipelines for these and future opportunities.

Timeline and Community Impacts

Construction continues through 2028, with peak activity in 2026–2027. Initial operations are targeted for Q3 2026, with phased ramp-up thereafter. Timelines may adjust with weather, supply chains, or other factors.

We recognize that developments of this scale can raise legitimate concerns about traffic, noise, lighting, and quality of life. To address these, we are implementing mitigation measures including noise barriers where needed, controlled lighting to reduce off-site glare, traffic management plans coordinated with the County, and regular community updates. We commit to full regulatory compliance and welcome ongoing dialogue. Your feedback will help us be a better neighbor.

Spartanburg's success is our success. We look forward to delivering on our commitments and contributing positively for decades to come.

Quotes from Local Partners

"When I think about NorthMark Strategies, I think of a partner that aligns with our core values, loving people, embracing the challenge, and leaving things better than they found them. That alignment has had a real impact on our business, enabling us to grow, hire locally, and expand our company. After 15 years of working with partners across the country, this relationship stands out. As the team responsible for the integration of some of their power generation systems, we can say those systems are built to meet or exceed the environmental and performance standards set."

Lee Lancaster, President, LEL International, Spartanburg, SC

"Working with NorthMark Strategies has been a great experience from day one. As a family-owned business, we've appreciated their commitment to working with local companies, and their team on site has been excellent to work with. What stands out most is the level of innovation behind the project. It's been especially interesting to learn about the technology involved, particularly their ability to

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

generate their own power and minimize impact on local infrastructure. That really sets this project apart. If a project like this is coming into a community, this is the way to do it. NorthMark Strategies is doing things responsibly, and I believe the economic impact for Spartanburg is much greater than many people realize.

Warren Clayton, President, Asheville Highway Rentals, Spartanburg, SC

NorthMark Strategies | S. Pine Street, Spartanburg, South Carolina

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STATE OF SOUTH CAROLINA COUNTY OF SPARTANBURG	)	IN THE COURT OF COMMON PLEAS SEVENTH JUDICIAL CIRCUIT
Concerned Citizens of Spartanburg County, Plaintiff, v. Valara Holdings, LLC, Spartanburg County, and Spartanburg County Administrator, Defendants.	)	C/A No. 2026-CP-42-03416 **AFFIDAVIT OF LISA AMADOR, P.E. IN OPPOSITION TO PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION**

BEFORE ME PERSONALLY APPEARED LISA AMADOR, P.E., who, after being first duly sworn, deposes and states as follows:

1. My name is Lisa Amador, I am over the age of 21, and I am competent to provide testimony in this case based on my personal knowledge regarding the matters addressed herein. I affirm that all statements included herein are truthful and accurate. I submit this affidavit in support of Defendants' Opposition to the Motion for Preliminary Injunction filed by Plaintiff Concerned Citizens of Spartanburg County.

I. Introduction

2. I am a Project Manager with Jacobs Project Management Co. ("Jacobs"). Jacobs is a professional services and technical consulting firm that, among other things, provides engineering, design, construction, and operations services. I have been a Project Manager for approximately 15 years. During that time, I have managed multiple aspects of several major public and private sector projects. Public utility projects I have managed include natural gas and electric power transmission, and private sector projects include data center, solar, and battery energy storage system permitting. In total, I have more than 20 years of experience in the areas of civil

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

engineering, environmental planning and compliance, and permitting. I received a Juris Doctor degree from Western State University College of Law, Fullerton, California and a Bachelor of Science degree in Civil Engineering from California State Polytechnic University, Pomona, California. I became registered as a Civil Engineer in California in 2004.

In or about May 2025, Jacobs was engaged by Valara Holdings LLC ("Valara" or the "developer") to provide engineering and construction management services in connection with Valara's design, development, and construction of a high performance computing center (the "HPCC" or the "Project") at 4000 South Pine Street, an approximately 294-acre site in an industrial area of Spartanburg, South Carolina (the "Property"). My role on the Project is as the ministerial permit manager. In this position, I am familiar with Spartanburg County ministerial permitting requirements and oversee the on-going process through which Jacobs and Valara have applied for and received various ministerial permits from Spartanburg County.

II. The Permitting Process

3. At every point during the design, permitting, and development of the Project, Jacobs and Valara have worked collaboratively with the County of Spartanburg (the "County"). During the permitting process, I and other representatives from Jacobs met with County officials at least five times to discuss permit applications and development plans, and Jacobs has provided substantial amounts of information to the County about the Project, including site plans and stormwater plans, as well as architectural, structural, mechanical, electrical, and plumbing construction plans for the onsite development improvements requiring County permitting.

4. The applications and supporting materials submitted to the County described the project as proceeding in multiple phases and including an onsite power generation facility. And the County has communicated to us on multiple occasions that each phase of the project would require a Minor Land Development Permit.

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

A. The Phase I Permitting Process

5. On March 10, 2025, I initiated the permitting process by emailing the Senior Planner for the Spartanburg County Planning & Development Department (the "Planning Department") about the proposed Project and our anticipated permit applications. I identified the Property as 4000 South Pine Street and explained the Property was an existing manufacturing facility with approximately 905,000 square feet of business space. I then explained that the Project would involve repurposing the existing facilities at the Kohler site to a high-performance computing center and that development of the HPCC would involve interior demolition and remediation of the current infrastructure. I also included several questions about the permitting process, including whether the Project would require a Minor or Major Land Development Permit. I also asked if we could apply for other permits concurrently with the Land Development Permit. The following day, the Senior Planner responded by email on behalf of the County, stating, among other things, that the Project would require a Minor Land Development permit and that we could apply for all permits concurrently, including any land disturbance permits that may be required.

6. The County consistently informed Jacobs that the appropriate permit for the Project was a Minor Land Development Permit. For example, on April 7, 2025, I emailed the Senior Planner to ask whether any other additional development permits were required for the Project or if the Minor Land Development permit satisfied the County's development permit requirement. That same day, the Senior Planner responded by email, confirming that the County only had two classes of development permits—major and minor—and that the Project, as a change of use, required a Minor Land Development permit.

7. Following this correspondence, Jacobs applied to participate in a Collaborative Development Review Meeting with the County. A Collaborative Development Review Meeting is a meeting in which prospective developers discuss their projects with various County officials

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

and then receive guidance from the reviewing departments and agencies. Our Collaborative Development Review Meeting took place on April 23, 2025. During this meeting, we discussed the scope of our project, including that it would be conducted in separate phases. The County once again confirmed that we should submit a Minor Land Development Permit Application. At no point did any County official suggest that we would need to or should submit a Major Land Development Permit.

8. Based on the County's guidance by email from the Senior Planner and the attendees at the County's Collaborative Development Review Meeting, Jacobs began preparing a Minor Land Development Permit Application for the first phase of the Project (the "Phase I Land Development Application"). If the County had indicated that a ***Major*** Land Development Permit would be required for the Project, Jacobs and Valara would have submitted one accordingly, but that was not the direction we received. To my knowledge, the submittal requirements for a minor and major development permit are the same, so the County could have used the same permit submittal documents for either permit but chose to process the documents as a Minor Land Development Permit.

9. On July 11, 2025, continuing to follow the guidance we received from the County, Jacobs and Valara submitted the Phase I Land Development Permit Application. This application included the Overall Site Plan, the Site Improvement Plan, Fire Apparatus Access Plan, and supporting documentation required by the Planning Department's Minor Land Development Checklist and our previous discussions with the County.

10. On July 30, 2025, we received minor written comments from the County concerning our application, focused on the overall site plan and the site improvement plan. We submitted our written response to the County on August 1, 2025.

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

11. On August 4, 2025, the Planning Department issued conditional approval for the Phase I application, pending the receipt of our land disturbance permit from the Spartanburg County Engineering Department ("Engineering Department"). Following the issuance of the land disturbance permit, the construction team attended a required pre-construction conference on August 26, 2025. The final Land Development Permit for Phase I of the Project was issued on August 27, 2025. Ex. 1.

B. The Phase II Permitting Process

12. In addition to discussing the multiple phases of development at the County's Collaborative Development Review Meeting, the site plan we included with the Phase I Minor Development Permit Application explicitly delineates between Phases I and II. *See* Ex. 2.

13. On October 15, 2025, while discussing via email the scope of the Phase II development with a Zoning Team Lead of the Spartanburg County Planning Department, I was first instructed to submit a new Minor Land Development Permit application. The Zoning Team Lead attached the Minor Land Development Permit application in pdf format to an email for my use, as she said that the public permitting portal had been down for a few weeks due to a cyberattack. On February 27, 2026, I had a call with the Development Manager for the Planning Department, who also requested that we submit a second, separate Minor Land Development Permit Application for the Phase II construction including the new access driveway and gas metering station. The Development Manager memorialized this request by email that same day, stating that, as discussed on our call, Valara would need to submit for a Minor Land Development permit for Phase II. Again, on April 1, 2026, the Spartanburg County Development Manager confirmed that it would be cleaner to apply for a new minor land development permit, showing the Phase II permanent structures on the same drawings that I used for the Phase I Minor Land Development Permit.

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14. Following my conversation with the Development Manager, my team at Jacobs immediately began preparing a second Minor Land Development Permit Application (the "Phase II Land Development Application"), which we submitted on April 6, 2026. That application once again included a Site Improvement Plan, Overall Site Plan, and other items required in the Planning Department's Minor Land Development Checklist. On April 16, 2026, we met with the County to discuss their comments on our Phase II application. We submitted a revised Phase II Land Development Application on April 27, 2026. Ex. 3.

15. The Phase II Minor Land Development Permit was conditionally approved by the County on May 13, 2026, authorizing the commencement of mass grading in Phase II, pending the receipt of the corresponding land disturbance permit from the Spartanburg County Engineering Department. *See* Ex. 4. Following the issuance of the land disturbance permit on May 14, 2026, the construction team attended a pre-construction meeting with the County on May 19, 2026, and Phase II mass grading began.

16. At no point during any of these Phase II discussions or applications did the County ever indicate that we should be applying for a different permit type or otherwise indicate any surprise that the Project involved a second phase. Throughout this process, it was my understanding and belief—and it remains my understanding and belief—that the Project qualifies as a "Minor Land Development," ***not*** a "Major Land Development," and the Minor Land Development Permit was the appropriate process for both Phase I and Phase II of this Project.

17. The Major Land Development process would not actually have required Valara to make further submissions or provide any more information: the submittal checklists are the same, as is the "Information Required to Support Application" in Table 2 of Unified Land Management Ordinance ("ULMO") Section 1.06.

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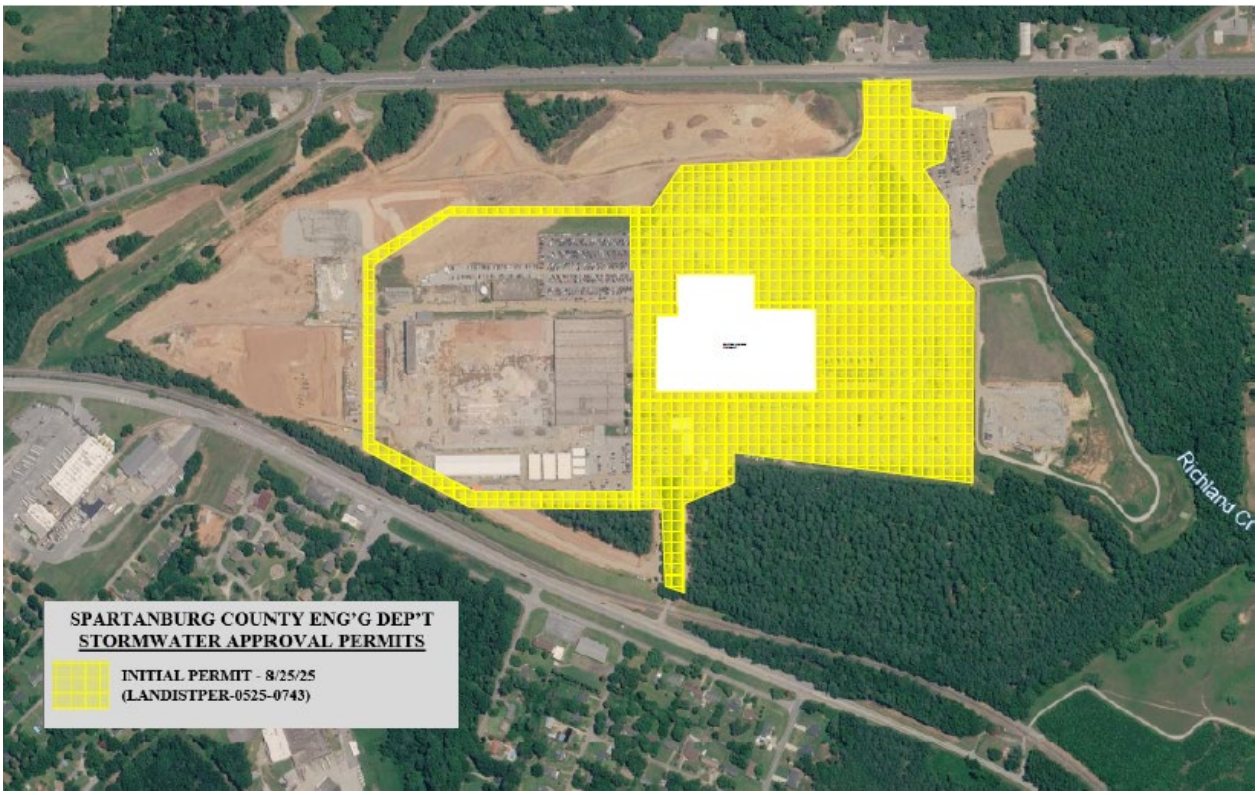
C. Other Permits Obtained by Valara in Connection with the HPCC

18. The Minor Land Development Permits are not the only permits issued by the County in connection with this Project. In addition to the Land Development Permits described above—which authorize Valara to construct or convert permanent buildings and structures for the change in use, Valara has received permits relating to land disturbance and building.

19. ***Land Disturbance Permits.*** A land disturbance permit covers site-development activities that disturb soil and could create erosion, sediment runoff, or stormwater impacts. Typical activities include clearing and grubbing vegetation, grading, excavation, trenching for underground utilities, as well as above ground construction of roads, structures, and parking lots. Under the ULMO, a land disturbance permit is required before any applicable land disturbing activities occur. This permit is separate and distinct from a land development permit, which pertains to permanent above ground structures, as confirmed by the County Development Manager. To obtain a land disturbance permit, the developer must submit an application to the County's Engineering Department. The developer must have an approved Storm Water Pollution Prevention Plan and Storm Water Management Drainage and Sediment Plans before the Engineering Department will issue a land disturbance permit.

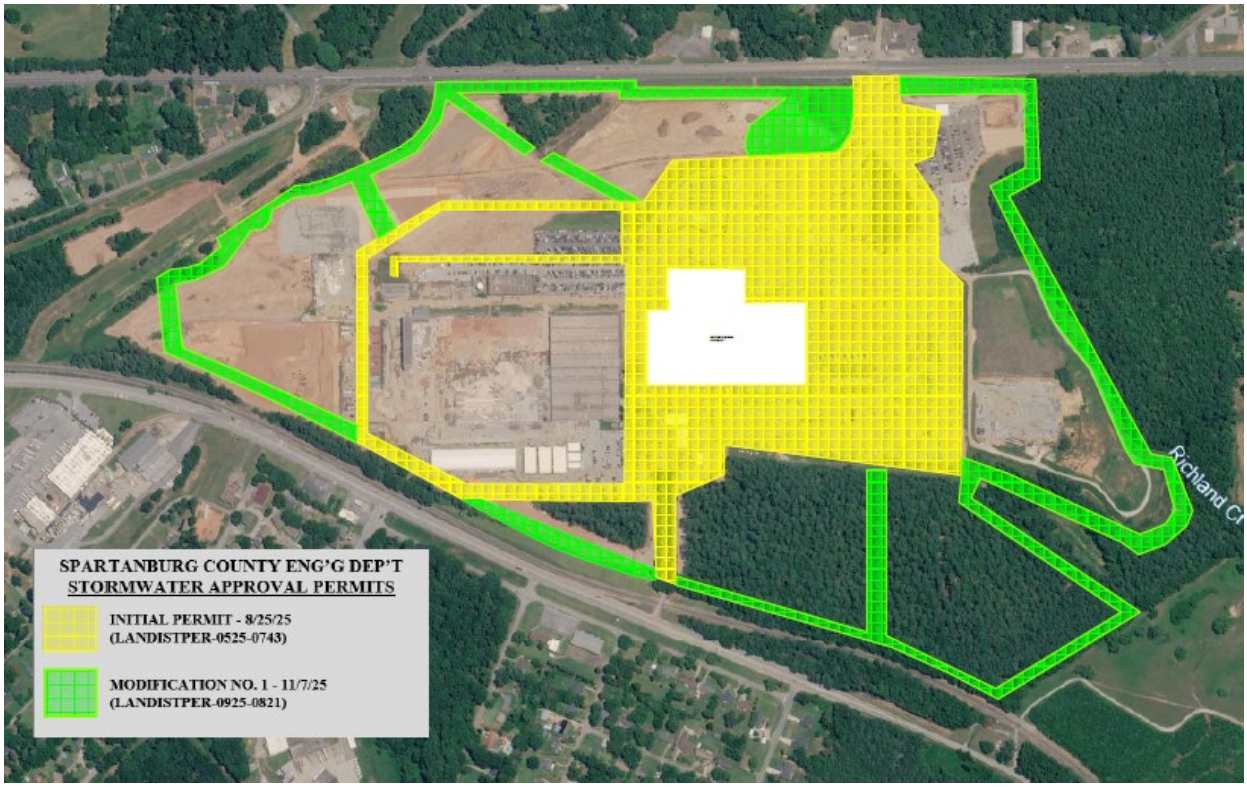
20. We first submitted an application for a land disturbance permit in May 2025, which was conditionally approved on August 7, 2025, and finally issued on August 25, 2025 (Permit No. LANDISTPER-0525-0743; as modified, the "Land Disturbance Permit"). Ex. 5. This permit covered the demolition and removal of existing pavement and underground utility installation. A map of the area covered by the initial grading permit, superimposed on a photograph of the Property similar to the one included in Plaintiff's Motion for a Preliminary Injunction, is included as Exhibit 6 and is as follows:

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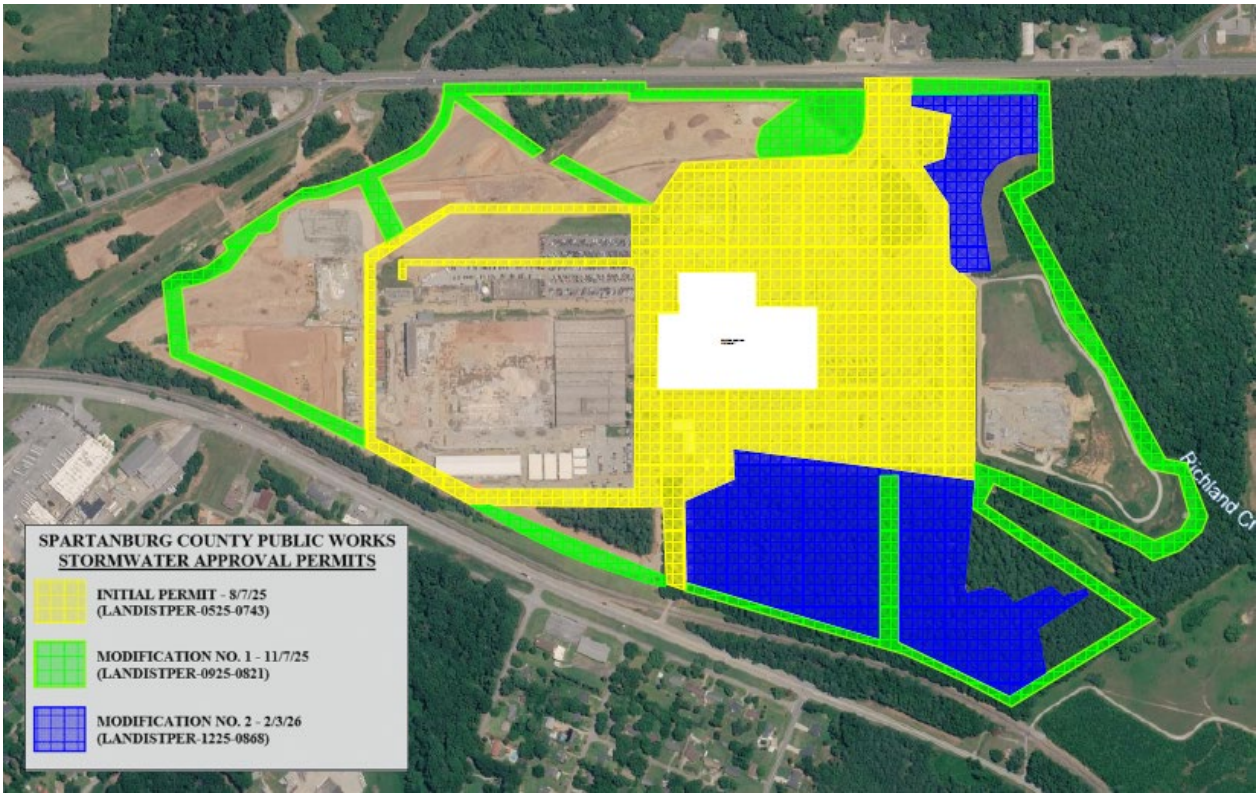
21. On September 11, 2025, we applied for a modification to the Land Disturbance Permit, which the Engineering Department approved on November 7, 2025 (Permit No. LANDISTPER-0925-0821). Ex. 7. This modification authorized grading for the construction of proposed perimeter fencing, equipment yards, pavement of proposed roads, construction of a parking area, and installation of storm drainage and modifications to the existing stormwater ponds. The area covered by this modification is reflected in the following graphic in Exhibit 6:

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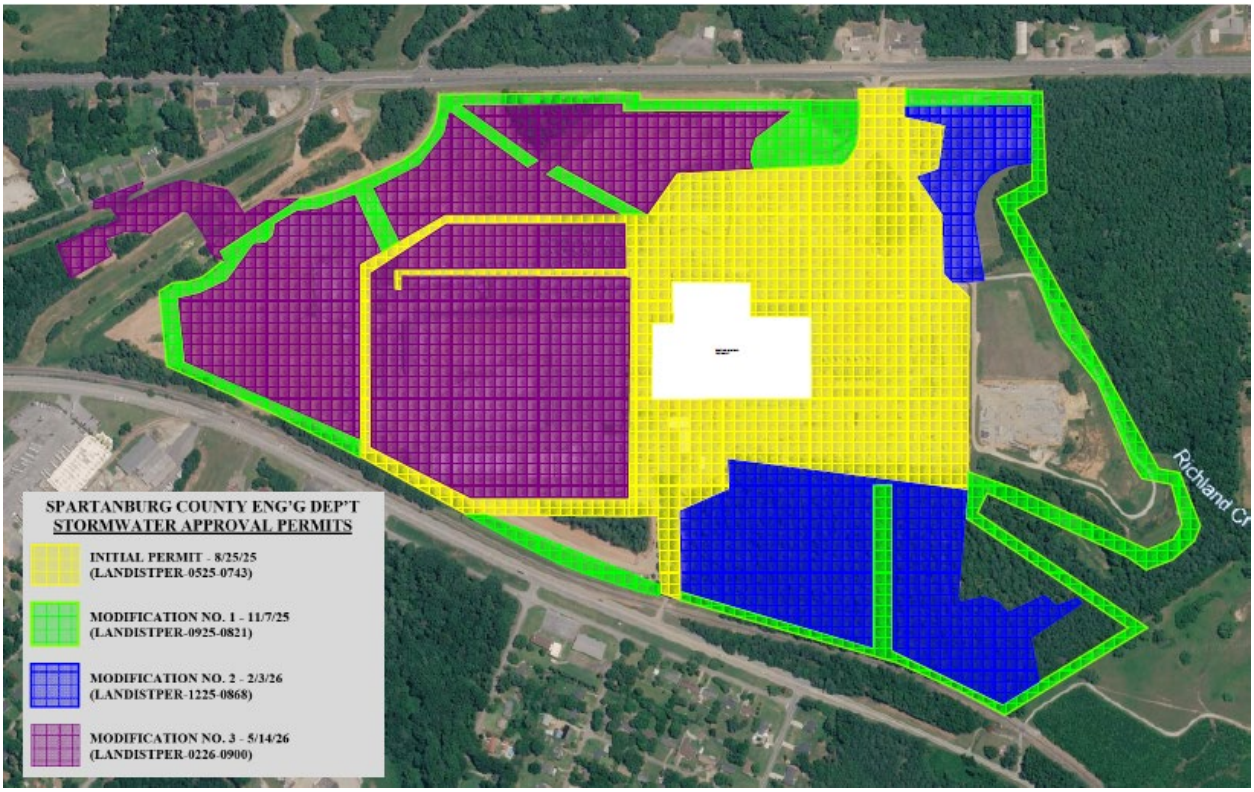
22. On November 20, 2025, we applied for our second modification to the Land Disturbance Permit, which was approved on February 3, 2026 (Permit No. LANDISTPER-1225-0868). Ex. 8. This Land Disturbance Permit authorized grading for two additional construction work and parking areas and related stormwater improvements. The area covered by this modification is reflected in the following graphic in Exhibit 6:

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23. On February 12, 2026, we submitted our third modification to the Land Disturbance Permit, which was approved on May 14, 2026 (Permit No. LANDISTPER-0226-0900). Ex. 9. This Land Disturbance Permit authorized mass grading on an additional 67.7 acres of the Property for Phase II related to the demolition of existing onsite structures and the construction of the gas metering station, associated access road, the onsite power generation complex, related construction work areas, and the installation of storm drainage and modifications to the existing stormwater ponds. The total area covered by the Land Disturbance Permit with all modifications to date is set forth in the following map in Exhibit 6:

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24. ***Building Permits.*** A building permit is required for new construction, additions, alterations, renovations, and other work regulated by the South Carolina Building Codes. The permit process is administered by the Spartanburg County Building Codes Department. On July 15, 2025, we applied for a building permit, which the Spartanburg County Building Codes Department issued on September 5, 2025, and later modified (the "Building Permit"). The Building Permit authorized Valara to renovate "the existing Kohler building 1 facilities to repurpose them for High Performance Compute Center operations." The Building Permit explicitly referenced interior demolition and renovation of the current infrastructure. Ex. 10.

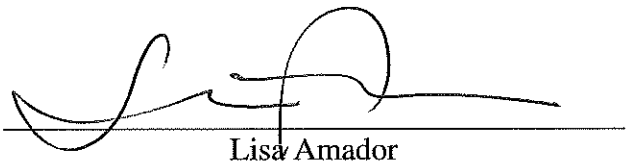
25. As part of the permitting process, developers are also required to enter into a demolition agreement, which establishes the timeframe for completion, as well as surety in the event of default. Valara applied for demolition approval on January 20, 2026, and the Spartanburg County Building Department issued its approval to proceed on April 15, 2026 (the "Demolition

Approval"). The Demolition Approval authorized the exterior demolition of Buildings 2 and 3 onsite.

26. It is my understanding and belief that, together, the County expressly authorized the grading, demolition, and development that has been conducted to date on the Property—including the "clear-cutting trees, grading, clearing, and [] other land development activities" that Plaintiff in its Amended Complaint and Motion for a Preliminary Injunction alleges has taken place "beyond the permitted boundary" of the Phase I Minor Land Development Permit.

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FURTHER AFFIANT SAYETH NOT.



Lisa Amador

Sworn to and subscribed before me

this _____ day of _____, 2026

SEE ATTACHED
NOTARY CERTIFICATE

Notary Public

My Commission Expires: _____

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California Jurat

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Los Angeles

DENNIS YEN
Notary Public - California
Los Angeles County
Commission # 2462867
My Comm. Expires Sep 12, 2027

Place Notary Seal Above

Subscribed and sworn to (or affirmed) before me on this 14th day of September, 2026, by Lisa Amador,

proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

Signature _____
Signature of Notary Public

----------*OPTIONAL INFORMATION*----------

Although the information in this section is not required by law, it could prevent fraudulent removal and reattachment of this jurat to an unauthorized document and may prove useful to persons on the attached document.

Description of Attached Document

Title or Type of Document Affidavit of Lisa Amador, et al. Document Date 09/14/2026

Number of Pages: 14

AMADOR EXHIBIT 1

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

Spartanburg County Planning and Development

366 N Church St, Suite 700

Spartanburg, SC 29303

Minor Land Development Permit (**DEVELOPPER-0725-0918**)

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

Permit Information

Permit Type: Development Permit - ULMO

Parcel Number(s): 7-18-00-061.01

Work Classification: Minor Land Development

Issue Date: 08/27/2025 **Expiration Date:** 08/27/2027 **Issued By:**

Project Name: MOC-1 High Performance Compute Center **Permit Status:** Issued

Property Location: 4000 S PINE ST
SPARTANBURG, SC 29302

Description: 7-18-00-061.01 - Redevelopment of the former Kohler Industrial Plant, which currently consists of an existing Manufacturing/Industrial facility comprised of approximately 905,000 square feet of business space including a main plant, kiln, and separate utility facility. Development of the property began in 1957 with additions and modifications completed through 2006.

The new developer, Valara Holdings LCC, intends to repurpose the existing facilities for the new MOC-1 High Performance Compute Center. To accommodate the proposed transition from the Manufacturing/Industrial facility to data center services, interior demolition and remodeling of the current infrastructure is required, as well as the addition of associated exterior equipment.
The County-approved Lot Combination was submitted for recording on 7/11/2025 (Official Receipt No. 353419).

Contact Information

Applicant

Lisa Amador

[redacted]

Property Attributes

Acres: 66.40 **Appearance Corridor(s):**

Census Tract: 239.01 **Road Classification:** A

Zoning District(s): ULMO

Maintenance of Existing Road:

Specifications

Classification: Heavy Industry **Conditional Use:** No

Parking: 0

Front Setback: 50' from edge of R/W

Side Setback: 25'

Rear Setback: 20'

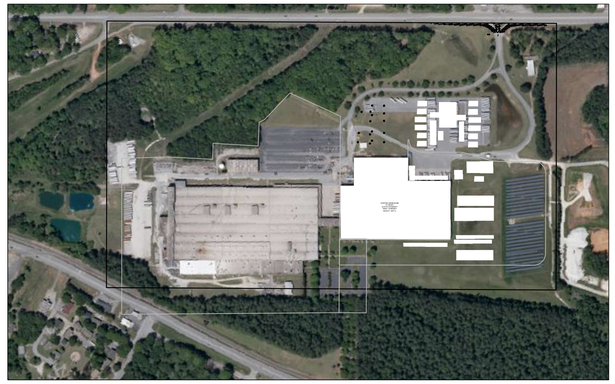
Front Buffer: 5' strip between the road R/W and any development

Side Buffer: 5' strip between the road R/W and any development

Rear Buffer:

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AMADOR EXHIBIT 2



SITE AERIAL

NTS

CATEGORY: HEAVY INDUSTRIAL
PARKING REQUIREMENT: 1.0 PER COMPANY VEHICLE LEFT ON PREMISES PLUS 1.0 PER EMPLOYEE ON LARGEST SHIFT.
NUMBER OF EMPLOYEES: 60
PARKING PROVIDED: 111.
ADA PARKING PROVIDED: 4
ZONING: NON-RESIDENTIAL USE IN UNIFIED LAND MANAGEMENT ORDINANCE (ULMO) PARTIAL RESTRICTION AREA.

SOUTH PINE ST.
MIN. 10' FROM PROPRTY LINE
PROPERTY LINE TYP
PROPOSED FENCING TYP.
PROPOSED SIGN MAX 75 SF AND 8 FT IN HEIGHT PER PZO ARTICLE 7
UTILITY EASEMENT
EXISTING VEGETATION (TYP)
MAIN GATE
NEW GUARD SHACK LOCATION. SECURITY ENTRANCE TO BE RECONFIGURED
SECONDARY GATE
TOP OF EXISTING POND
CANOPY TREE (TYP) NOT LESS THAN 1 PER 20 SPACES AND NOT MORE THAN 100 FT FROM STALL TO TRUNK OF TREE PER ULMO SECTION 2.02-3
GENERATORS (TYP)
BESS (TYP)
SECONDARY GATE
TOP OF EXISTING POND.
TRANSFORMERS TYP.
24' (TYP)
SECONDARY GATE.
PROPOSED GATE LOCATION.
E HOUSE TYP.
PROPOSED TRESTLE (TYP)
RAW WATER STORAGE TANKS.
GENERATORS (TYP)
MECHANICAL EQUIPMENT TYP.
PROPOSED TRESTLE (TYP)
VALARA HOLDINGS, LLC.
PARCEL ID: 7-18-00-061.02
ACRES: 56.35
EXISTING ELECTRICAL SUBSTATION
EXISTING MAINTENANCE BUILDING
PHASE 2 TRESTLE (TYP)
EXISTING WAREHOUSE
FF 799.3FT
ELEVATION 827.6 FT
AREA: 33750 SGFT
HEIGHT: 30 FT +/-
EXISTING WAREHOUSE
AREA: 578,000 SQFT
HEIGHT: 30 FT±
VALARA HOLDINGS, LLC.
PARCEL ID: 7-18-00-089.01
ACRES: 13.42
VALARA HOLDINGS, LLC.
PARCEL ID: 7-18-00-061.00
ACRES: 135.30
PHASE 2 TRESTLE (TYP)
EXISTING TREES TYP.
PROPERTY LINE TYP.
VALARA HOLDINGS, LLC.
PARCEL ID: 7-18-00-061.01
ACRES: 66.40
EXISTING VEGETATION TYP.
SECONDARY EMERGENCY VEHICLE ACCESS CONNECTING TO SOUTHPORT RD.

LEGEND:

- ASPHALTIC CONCRETE (HEAVY DUTY)
- ASPHALTIC CONCRETE (LIGHT DUTY)
- VEGETATION
- PHASE 2 AREA

0 100 200 Feet

South811 Carolina

Jacobs
Phoenix Office
1501 W. Fountainhead Pkwy, Suite 401
Tempe, Arizona 85282

STAMP:
SOUTH CAROLINA
JACOBS ENGINEERING GROUP, INC.
No. C00316
CERTIFICATE OF AUTHORIZATION

STAMP:
PRELIMINARY NOT FOR CONSTRUCTION

NO.	DATE	DSGN	DR	CHK	APVD	BY	APVD
0	07/11/2025	K. NETTLES	S. ATWOOD	M. POWELL	K. NETTLES	LA	
				REVISION			
				PKG25 - ISSUED FOR PERMIT			

Project Title: MOC-1
Drawing Title: SITE CIVIL SITE IMPROVEMENTS PLAN
Proj. No.: 16GAKZ01
Drawing No.: Z0C0-0501

Plot Date/Time: 4/10/2025 3:11:58 PM Name: Z0C0-0501.dwg User: sbretz

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AMADOR EXHIBIT 3

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

Type:

Minor Land Development

Status:

In Review

Project Name:

MOC-1 High Performance Compute Center

Applied Date:

04/06/2026

Issue Date:

District:

UNINCORPORATED

Expire Date:

Finalized Date:

Description:

7-18-00-061.00 - Phase II improvements for the MOC-1 High Performance Compute Center consist of four (4) proposed buildings with floor areas of approximately 423,000 square feet, 33,750 square feet, 19,450 square feet, and 18,000 square feet, as shown on the Site Improvement Plan. Associated site improvements include a power yard, internal roadways and site access road, electrical equipment houses, transformers, modular yard areas, equipment trestles, a metering station, mechanical cooling system, stormwater management ponds, and ancillary improvements.
The maximum number of employees during the largest shift is anticipated to be 167. A total of 307 parking spaces is provided on-site, including 18 ADA dedicated parking spaces.

Summary Locations Fees Reviews Inspections Attachments Contacts

Sub-Records Holds Meetings More Info Conditions

AMADOR EXHIBIT 4

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Spartanburg County Planning and Development

366 N Church St, Suite 700

Spartanburg, SC 29303

Site Plan/Preliminary Conditional Plat Approval Letter

(DEVELOPPER-0426-1062)

Lisa Amador

[redacted]

Re: MOC-1 High Performance Compute Center - Minor Land Development

Tax Map Number(s): 7-18-00-061.00

To Whom It May Concern:

This notification will be sent to the applicant, according to the application. If there are others affiliated with this project that should be sent this notification, please forward this on to them as well.

Planning Department Staff has reviewed the submitted project for the above referenced development and will provide Site Plan/Preliminary Plat approval upon receipt of all items required by the Unified Land Management Ordinance (ULMO), and listed below, and approvals by:

1. **Spartanburg County Engineering and Stormwater**
2. **Architectural Design**
3. **Landscape Plan**
   Parking lot landscaping

Sincerely,

Tia Keitt, AICP
Planner IV Team Lead - Zoning
Spartanburg County Planning and Development
(864) 598-7068

AMADOR EXHIBIT 5

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

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Spartanburg County Public Works

9039 Fairforest Rd

Spartanburg, SC 29301

Grading/Storm Water Permit (**LANDISTPER-0525-0743**)

Permit Information

Permit Type: Land Disturbance requiring NPDES Permit Coverage **Parcel Number:** 7-18-00-061.01

Work Classification: NPDES Permit

Description: These proposed improvements are for construction activities associated with the "Early Works" Phase of the project. This phase of the pr

Issue Date: 08/25/2025 **Expiration Date:** 08/25/2027

Project Name: **Permit Status:** Issued

Property Location: 4000 S PINE ST
SPARTANBURG, SC 29302

Contact Information

Engineer	Grading Contractor	Agent or Contact Person	Property Owner
Keilah Nettles	D.H. Griffin Infrastructure, LLC	Lisa Amador	Valara Holdings LLC
		[redacted]	
Home Phone: [redacted]	Home Phone:	Home Phone: [redacted]	Home Phone: [redacted]
Business Phone:	Business Phone:	Business Phone: [redacted]	Business Phone:
Mobile Phone:	Mobile Phone:	Mobile Phone: [redacted]	Mobile Phone:

General Information

Facility or Project Name: MOC-1

Surface Area of Land Disturbance: 84.00 **Project Type:**

CONTACT SPARTANBURG COUNTY ENGINEERING DEPARTMENT AT (864) 595-5320 TO SCHEDULE A PRE-CONSTRUCTION MEETING PRIOR TO ANY GRADING

Signature: Chad Wineman Phone Number: [redacted]

(Grading Contractor)

Spartanburg County Engineering Inspector: Blake Williams

Inspector Phone Number: [redacted] **Pre-construction Meeting Date:** August 26, 2025

Notes:

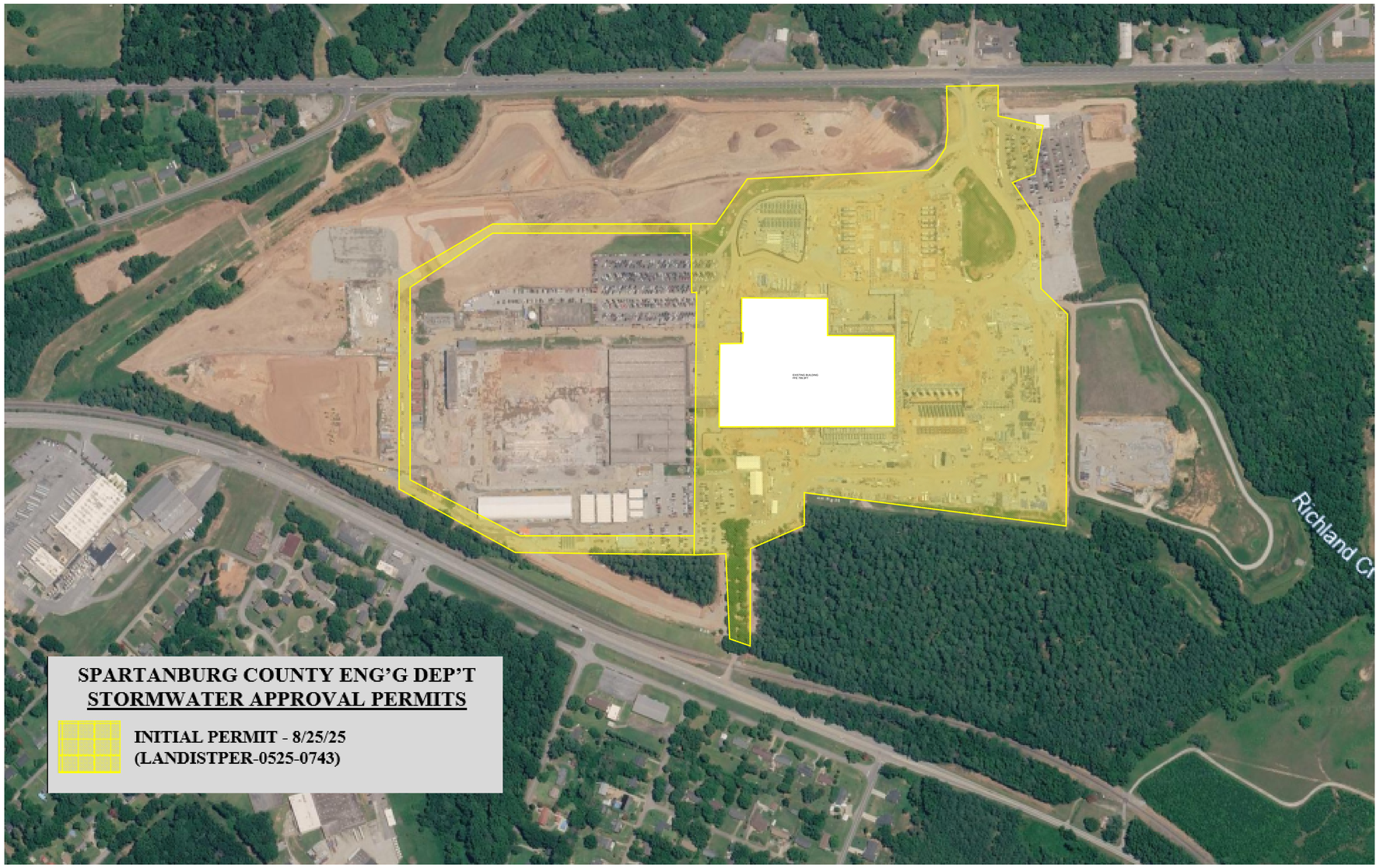
Cynthia Vega
Issued By

08/25/2025
Date

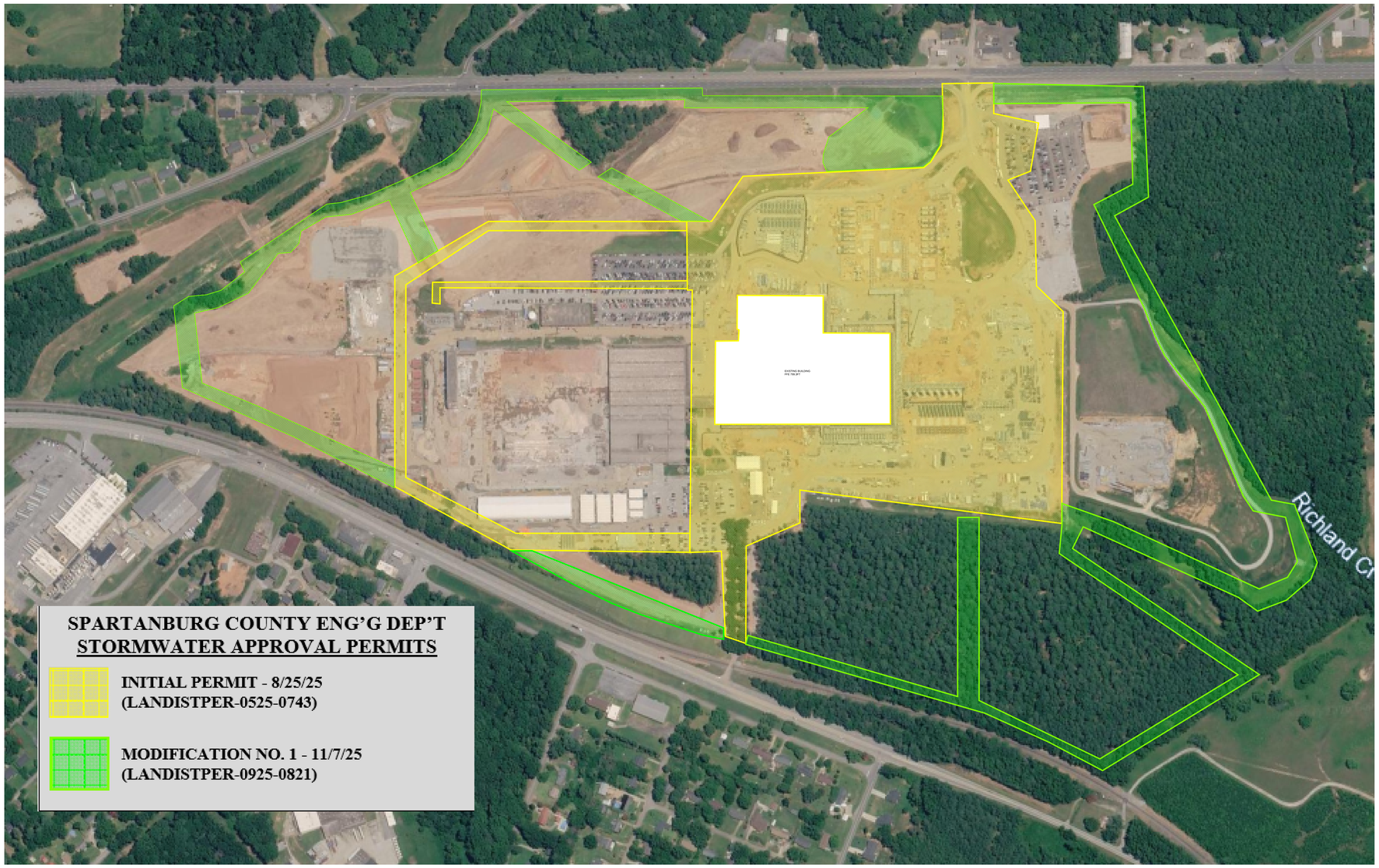
AMADOR EXHIBIT 6

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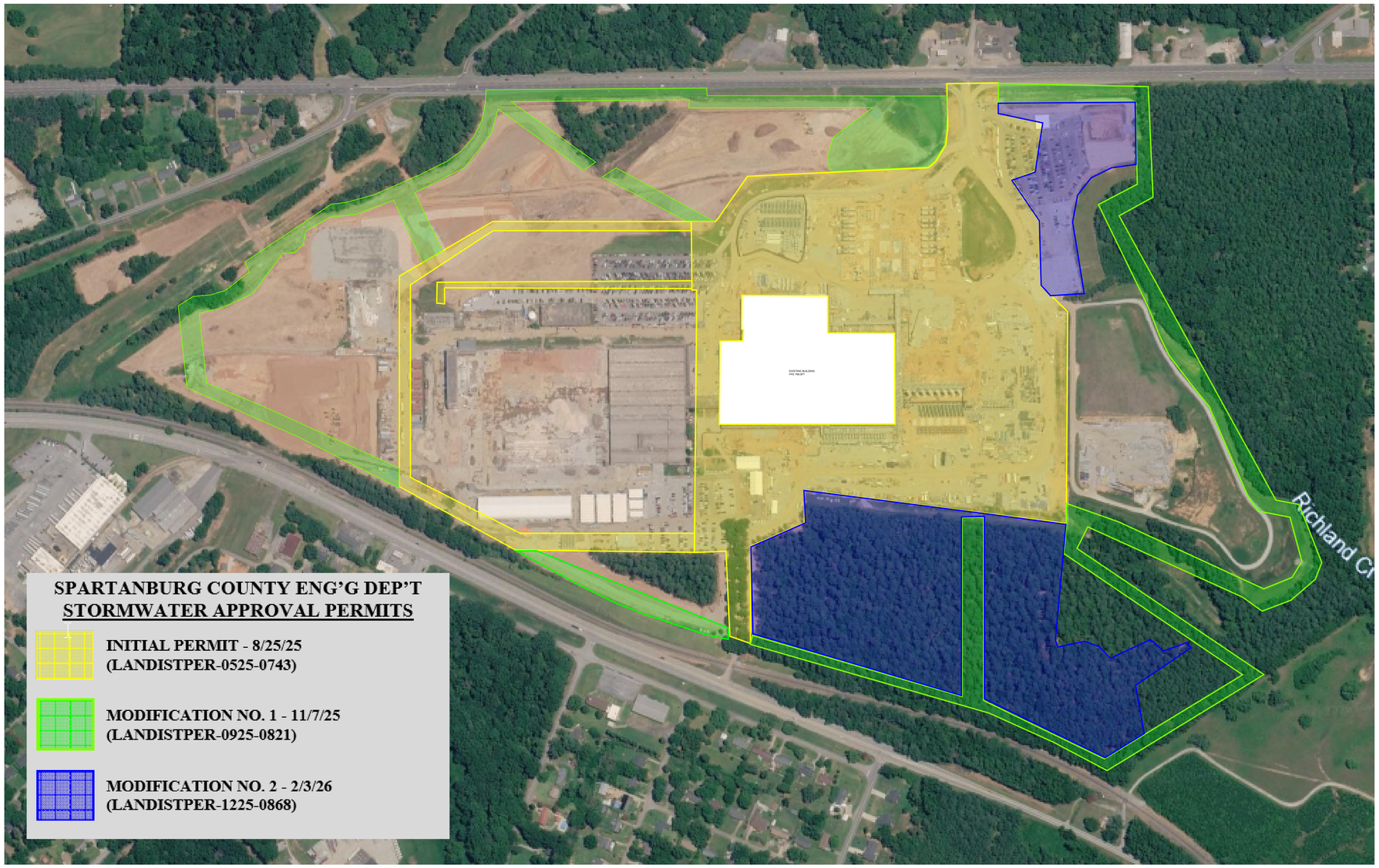
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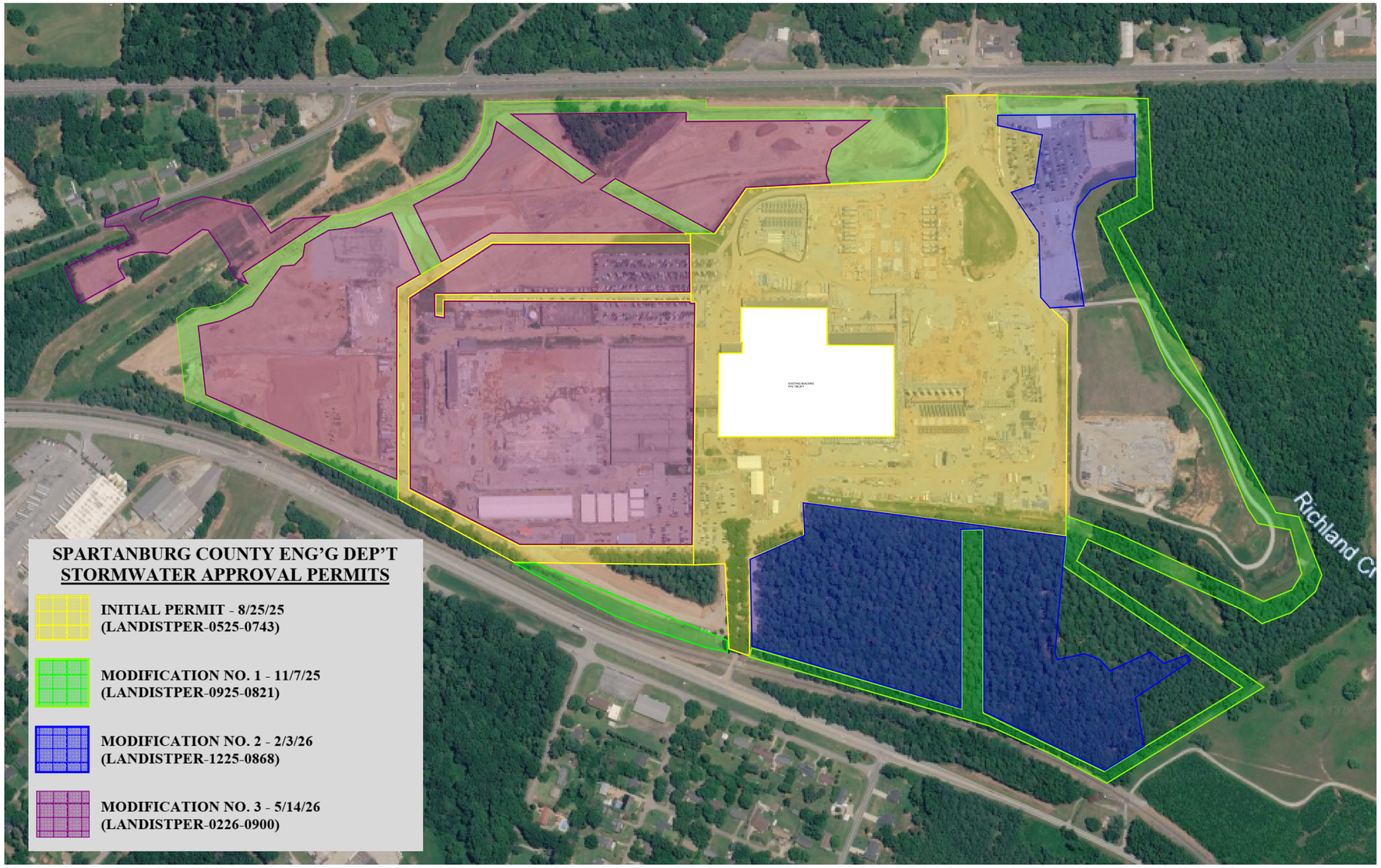
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AMADOR EXHIBIT 7

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Spartanburg County Public Works
9039 Fairforest Rd
Spartanburg, SC 29301
Storm Water Approval Letter (**LANDISTPER-0925-0821**)

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

Valara Holdings LLC

11/07/2025

Re: MOC-1 Major Modification
Disturbed Area: 0.00 acres

Tax Map Number: 7-18-00-061.00
Storm Water Permit Fee: $1000.00

Dear Valara Holdings LLC,

Your application for a Storm Water Permit for the referenced project has been reviewed under Delegated Authority of the State of S.C. Storm Water Management and Sediment Reduction Regulations (R72-300). This letter is for notification puposes only. An invoice will be issued separately for the Storm Water/Grading permit.

Issuance of a storm water permit does not create a right to install other improvements not shown on this plan. The Count should be notified of any modifications to the County Reviewed Plans.

This permit will allow storm water discharge associated with construction activity to waters of the State of S.C. in accordance with provisions of the S.C. Pollution Control Act and the Federal Clean Water Act. Permits from other federal state and local agencies may be required to comply with NPDES and other applicable laws. Please check with your consultant to ensure that you have all necessary permits for this project.

Notify the Spartanburg County Engineering Division, at (864)595-5320 as to the start date of construction. This site will b periodically inspected by field staff of the Engineering Division to ensure that the approved erosion control measures are implemented.

Sincerely,

Philip Shoolbred
Senior Engineering Coordinator

cc: Keilah Nettles, Jacobs

AMADOR EXHIBIT 8

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

Spartanburg County Public Works
9039 Fairforest Rd
Spartanburg, SC 29301
Storm Water Approval Letter (**LANDISTPER-1225-0868**)

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

Valara Holdings LLC

02/03/2026

Re: MOC-1 Major Modification
Disturbed Area: 0.00 acres

Tax Map Number: 7-18-00-061.00
Storm Water Permit Fee: $1000.00

Dear Valara Holdings LLC,

Your application for a Storm Water Permit for the referenced project has been reviewed under Delegated Authority of the State of S.C. Storm Water Management and Sediment Reduction Regulations (R72-300). This letter is for notification puposes only. An invoice will be issued separately for the Storm Water/Grading permit.

Issuance of a storm water permit does not create a right to install other improvements not shown on this plan. The Count should be notified of any modifications to the County Reviewed Plans.

This permit will allow storm water discharge associated with construction activity to waters of the State of S.C. in accordance with provisions of the S.C. Pollution Control Act and the Federal Clean Water Act. Permits from other federal state and local agencies may be required to comply with NPDES and other applicable laws. Please check with your consultant to ensure that you have all necessary permits for this project.

Notify the Spartanburg County Engineering Division, at (864)595-5320 as to the start date of construction. This site will b periodically inspected by field staff of the Engineering Division to ensure that the approved erosion control measures are implemented.

Sincerely,

Philip Shoolbred
Senior Engineering Coordinator

cc: Keilah Nettles, Jacobs

AMADOR EXHIBIT 9

ELECTRONICALLY FILED - 2026 Sep 14 9:27 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

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Spartanburg County Public Works

9039 Fairforest Rd
Spartanburg, SC 29301

Storm Water Approval Letter (**LANDISTPER-0226-0900**)

Valara Holdings LLC

05/14/2026

Re: MOC-1 High Performance Compute Center
Disturbed Area: 169.60 acres

Tax Map Number: 7-18-00-061.00
Storm Water Permit Fee: $24744.00

Valara Holdings LLC,

Your application for a Storm Water Permit for the referenced project has been reviewed under Delegated Authority of the State of S.C. Storm Water Management and Sediment Reduction Regulations (R72-300). This letter is for notification puposes only. An invoice will be issued separately for the Storm Water/Grading permit.

The Storm Water/Grading Permit Fee can be paid online with a credit card in the Citizen Self Service (CSS) Portal or the fee may be paid for with a check, made payable to Spartanburg County, at the Spartanburg County Community Services Building at 9039 Fairforest Road Spartanburg, SC 29301. Once the **Licensed Grading Contractor has been verified,** the Storm Water/Grading Permit and Plans will be made available online in the Citizen Self Service (CSS) Portal.

Issuance of a storm water permit does not create a right to install other improvements not shown on this plan. The Count should be notified of any modifications to the County Reviewed Plans.

This permit will allow storm water discharge associated with construction activity to waters of the State of S.C. in accordance with provisions of the S.C. Pollution Control Act and the Federal Clean Water Act. Permits from other federal state and or local agencies may be required to comply with NPDES and other applicable laws. Please check with your consultant to ensure that you have all necessary permits for this project.

Notify the Spartanburg County Engineering Division at (864)595-5320 as to the start date of construction. This site will be periodically inspected by field staff of the Engineering Division to ensure that the approved erosion control measures are implemented.

Sincerely,

Philip Shoolbred
Senior Engineering Coordinator

cc: Keilah Nettles, Jacobs

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AMADOR EXHIBIT 10

Spartanburg County Building Codes

366 N Church St, Suite 500

Spartanburg, SC 29303

Building Permit (**COMERCONST-0725-2009**)

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Permit Information

Permit Type: Building (Commercial)

Work Classification: Alteration, Remodel, Repair

Description: Renovation of the existing Kohler building 1 facilities to repurpose them for High Performance Compute Center operations. To facilitate the

Issued Date: 09/05/2025

Expiration Date: 03/04/2026

Project Name: MOC-1 High Performance Compute

Permit Status: Issued

Property Location: 4000 S PINE ST
SPARTANBURG, SC 29302

Contact Information

General Contractor	Applicant	Property Owner
Nicholas Blaser	Lisa Amador	Valara Holdings LLC
PII	PII	
Home Phone:	Home Phone: PII	Home Phone: PII
Business Phone: PII	Business Phone: PII	Business Phone:
Mobile Phone: PII	Mobile Phone: PII	Mobile Phone:

Building Information

Job Cost: $56850000.00

# of Stories: 1

# of Bedrooms: 0

# of Bathrooms: 7

# of Units/Tenants: 1

Construction Type II-B

Occupancy Type: B: Office, Professional, S-1: Storage, Mod Hazard

Foundation Type: Slab

Framing Type: Steel

Heating Type: Gas

Roofing Type: Other

Type of Air Conditioning/Cooling:

Heated Space (Sq Ft): 338,379

Unheated Space (Sq Ft): 0

Accessory Heated/Unheated Space (Sq Ft): 0

Service: Upgrade

Water: Public Water

High Pressure System: No

Sewer: Existing

Septic: N/A

Exterior: Metal, Brick

Fee Information

Invoice Number	Fee Name	Fee Amount	Amount Paid
INV-00044709	Building Permit Fee (Commercial)	$914,056.75	$914,056.75
INV-00044709	Building Plan Review Fee	$457,028.38	$457,028.38
	Totals:	**1,371,085.13**	**$1,371,085.13**

Spartanburg County Building Codes
366 N Church St, Suite 500
Spartanburg, SC 29303

Building Permit (**COMERCONST-0725-2009**)

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AFFIDAVIT OF APPLICANT

OWNER/AGENTS/CONTRACTOR ARE RESPONSIBLE FOR CHECKING ANY DEED RESTRICTIONS AND COVENANTS
It is the Owner/Agents/Contractor responsibility to check with the Planning Dept 864-596-3570, for ALL SETBACKS prior to starting the project.

The Applicant/Permit Holder hereby certifies and agrees as follows:

1.) that he/she is authorized to make this application;
2.) that he/she has read the above information and it is true and correct;
3.) that he/she will comply with all county ordinances, laws, and regulations, all federal, and state laws related to the use of land and structures and the construction of structures;
4.) that he/she grants right of entry to the property to the building official and his employees for the purpose of inspections and posting of notices. If any of the information supplied by the owner/owners agent is incorrect then this permit may be revoked. Persons signing this permit agrees to post same on front of lot visible from road or street.

This permit expires 6 months from the date of issuance on inactivity. All Land Use and Stormwater requirements are to be completed prior to final Building inspection and occupancy.

Alesya Mikhaylenko	**9/5/2025**
Issued By	Issued Date

ELECTRONICALLY FILED - 2026 Sep 14 5:35 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

STATE OF SOUTH CAROLINA COUNTY OF SPARTANBURG	)	IN THE COURT OF COMMON PLEAS
Concerned Citizens of Spartanburg County, Plaintiff, v. Valara Holdings, LLC, Spartanburg County, and Spartanburg County Administrator, Defendants.	)	C.A. No. 2026-CP-42-03416 **MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION AND IN SUPPORT OF MOTION TO DISMISS**

NATURE OF THE CASE

Plaintiff Concerned Citizens of Spartanburg County initiated this Action on July 6, 2026 relating to the redevelopment of the former Kohler industrial facility located at 4000 South Pine Street by Valara Holdings, LLC (the "Project"). Plaintiff asserts claims for declaratory and injunctive relief challenging the County's classification of the project as a Minor Land Development and certain grading and land-disturbing activities associated with the project.

FACTUAL BACKGROUND

Spartanburg County's Land Development Permitting Process

Spartanburg County regulates the development and use of land within the unincorporated areas of the County, in the vicinity of this site, through its Unified Land Management Ordinance ("ULMO"). The ULMO was enacted in 1999 and establishes the County's land development permitting process. See generally Spartanburg County, S.C., Ordinance No. O-99-015 (Dec. 31, 1999).

Article 1 of the ULMO governs applications and required permits. Id. The ULMO provides for the administrative classification of land development applications as either Minor or

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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.

ELECTRONICALLY FILED - 2026 Sep 14 5:35 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

The Valara Project and Development Applications

The property at issue is located at 4000 South Pine Street in Spartanburg County and involves the redevelopment of the former Kohler Industrial facility. The existing facility was developed beginning in 1957 and includes approximately 905,000 square feet of existing manufacturing and industrial space. See Spartanburg County, Citizen Self Service, Minor Land Development Permit No. DEVELOPPER-0725-0918.

On July 11, 2025, Valara submitted an application to the Spartanburg County Planning and Development Department for a Minor Land Development Permit for Phase I of the Project. The materials submitted with the application identified the project as the "MOC-1 High Performance Compute Center." The Minor Land Development Checklist submitted with the application identified the property as approximately 293.637 acres and reflected that a separate Land Disturbance Permit was under review by the County.

Notably, on July 18, 2025, the South Carolina Department of Environmental Services ("DES") issued a **public notice** announcing a public comment period for Valara's application for a Clean Air Act permit. (See Am. Compl. ¶¶ 58–59, Ex. 3.) The **public notice identified the facility as a data center** located at 4000 South Pine Street and stated that the data center would be powered by twenty-four natural-gas generators. The public comment period remained open through August 16, 2025. DES subsequently issued the air permit on September 17, 2025. (See id.)

Following its review of Valara's application for Phase I of the Project, the County issued Minor Land Development Permit No. DEVELOPPER-0725-0918 on August 27, 2025. See Spartanburg County, Citizen Self Service, Minor Land Development Permit No. DEVELOPPER-0725-0918. The permit authorized the redevelopment of the former Kohler industrial plant for the

ELECTRONICALLY FILED - 2026 Sep 14 5:35 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

MOC-1 High Performance Compute Center, including interior demolition and remodeling of the existing infrastructure and the addition of associated exterior equipment. Id. The permit expires on August 27, 2027. Id.

On April 6, 2026, Valara submitted a second Minor Land Development application for Phase II of the project. See Spartanburg County, Citizen Self Service, Minor Land Development Permit No. DEVELOPPER-0426-1062. The Phase II plans contemplate construction of four proposed buildings of approximately 423,000, 33,750, 19,450, and 18,000 square feet, respectively, together with associated improvements including power yards, internal roadways, electrical equipment houses, transformers, modular yard areas, equipment trestles, a metering station, mechanical cooling systems, and stormwater management ponds. (Id.)

The Phase II application remains pending before the County. (Id.) On May 13, 2026, Planning Department staff issued a preliminary conditional approval letter advising that site-plan approval would be provided upon receipt of the remaining required items and approvals. Those outstanding items included approval from County Engineering and Stormwater, architectural design, and a landscape plan, including parking lot landscaping.

Grading and Land-Disturbance Permitting

Land-disturbing activities are regulated through a separate stormwater and land disturbance permitting process. See Spartanburg County, S.C., Ordinance No. O-14-29 § 3.1(b) (Nov. 17, 2014); Ordinance No. O-99-015 §§ 1.08, 1.11, 1.13. South Carolina's Stormwater Management and Sediment Reduction Regulations, S.C. Code Ann. Regs. 72-300 *et seq.*, provide that, unless otherwise exempted, a person may not undertake a land-disturbing activity without an approved stormwater management and sediment control plan from the appropriate plan approval agency. S.C. Code Ann. Regs. 72-305(A) (1992). South Carolina law authorizes the State to delegate any

ELECTRONICALLY FILED - 2026 Sep 14 5:35 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

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

ELECTRONICALLY FILED - 2026 Sep 14 5:35 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

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

ELECTRONICALLY FILED - 2026 Sep 14 5:35 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

water management and sediment control programs. Id.

Valara's Grading and Land Disturbance Permits

Under the County's Storm Water Management Ordinance, Valara separately sought and obtained authorization for land-disturbing activities at the site. On May 23, 2025, Valara submitted an application for a Land Disturbance Permit for the MOC-1 High Performance Compute Center. (Brown Aff. ¶ 14.) The Engineering Division issued Land Disturbance Permit No. LANDISTPER-0525-0743 on August 25, 2025. (Brown Aff. ¶ 15.) See Spartanburg County, Citizen Self Service, Permit No. LANDISTPER-0525-0743. The permit authorized land-disturbing activities within 84 acres. (Brown Aff. ¶ 16.)

Valara thereafter obtained approved modifications to the Grading/Storm Water Permit, which ultimately increased the approved limits of disturbance to a total of 169.6 acres. (Brown Aff. ¶ 18.)

The land-disturbing activities at issue in this action occurred within the area authorized by Valara's approved Grading/Storm Water Permit and subsequent approved modifications, with the exception of approximately two acres. (Brown Aff. ¶ 19.) County personnel observed that area during a site visit on July 22, 2026. (Id.) Representatives of Jacobs were notified on site and requested to include the area within an existing permit-modification application that was submitted to the County on July 8, 2026. (Id.) That modification remains under review. (Id.)

To date, Spartanburg County has not received a citizen complaint pursuant to Section 8.1 of the Storm Water Management Ordinance or Regulations 72-313 and 72-314 concerning the grading or land-disturbing activities conducted on Valara's property. (Brown Aff. ¶ 21.)

ELECTRONICALLY FILED - 2026 Sep 14 5:35 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

ARGUMENT

In Plaintiff's Amended Complaint, Plaintiff asserts three causes of action: (1) a claim under the Declaratory Judgment Act alleging that the Valara Project constitutes a Major Land Development under the ULMO; (2) a claim under the South Carolina Local Government Comprehensive Planning Enabling Act alleging violations of the ULMO based on the County's review and approval of the Project as a Minor Land Development; and (3) a claim under both Acts alleging that Valara has exceeded the scope of its existing land development permit and is conducting development activities without the required land development permit.

Plaintiff now seeks extraordinary injunctive relief based upon these claims. As an initial matter, however, Plaintiff failed to pursue the administrative remedies available to challenge the County actions at issue before filing this action. As discussed below, Plaintiff's failure to exhaust its administrative remedies requires dismissal of the Amended Complaint. For the same reason, the Court cannot grant the preliminary injunctive relief requested. Even if the Court reaches the requirements for preliminary injunctive relief, Plaintiff cannot satisfy them.

Plaintiff Has Failed to Exhaust Its Administrative Remedies

Under South Carolina law, "the doctrine of exhaustion of administrative remedies requires that where an administrative remedy is provided by statute, relief must be sought by exhausting this remedy before the courts will act." De Pass v. Spartanburg, 234 S.C. 198, 203, 107 S.E.2d 350, 351-352 (1959). "Exhaustion is generally required as a matter of preventing premature interference with agency processes, so that the agency may function efficiently and so that it may have an opportunity to correct its own errors, to afford the parties and the courts the benefit of its experience and expertise, and to compile a record which is adequate for judicial review." Video Gaming Consultants, Inc. v. S.C. Dep't of Revenue, 342 S.C. 34, 38, 535 S.E.2d 642, 644 (2000).

ELECTRONICALLY FILED - 2026 Sep 14 5:35 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

South Carolina courts therefore require parties challenging local land-use decisions to pursue the administrative remedies provided by statute and ordinance before seeking judicial relief. See, e.g., Moore v. Sumter Cnty. Council, 300 S.C. 270, 274, 387 S.E.2d 455, 458 (1990) (affirming summary judgment where property owners challenged a land-use ordinance without first exhausting available administrative remedies); Charleston Dev. Co., LLC v. Alami, 433 S.C. 533, 544–46, 860 S.E.2d 687, 693–94 (Ct. App. 2021) (holding that plaintiffs could not circumvent the exhaustion requirement by seeking judicial enforcement of a zoning ordinance without first pursuing the ordinance's administrative remedies).

It is clear that Plaintiff has failed to exhaust its administrative remedies here. First, with respect to allegations relating to the clearing and grading of the site, such claims relate to the Land Disturbance Permit issued by the County. The County's Storm Water Management Ordinance provides a specific remedy to Plaintiff if it believes that the permit should not have been issued or, as Plaintiff alleged in the Amended Complaint, Valara exceeded the scope of the permit or violated its conditions. Plaintiff must pursue the administrative procedure set forth in Section 8.1 of the County's Storm Water Management Ordinance, yet it has made no effort to do so. Indeed, Spartanburg County has received no citizen complaint pursuant to Section 8.1 or Regulations 72-313 and 72-314 concerning the grading or land-disturbing activities conducted on Valara's property. (Brown Aff. ¶ 21.)

Second, Plaintiff likewise failed to exhaust its administrative remedies with respect to its challenge to the County's classification of the project as a Minor Land Development. The ULMO provides an administrative process through which an aggrieved person or party may appeal a decision of the County. The County issued the Phase I Minor Land Development Permit on August 27, 2025. Plaintiff did not appeal that decision within the time provided by the ULMO and made

ELECTRONICALLY FILED - 2026 Sep 14 5:35 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

no effort to pursue the administrative remedy available to it before filing this action. Plaintiff cannot now bypass that process and challenge the County's classification decision for the first time in this Court. See Botany Bay Marina, Inc. v. Townsend, 296 S.C. 330, 334, 372 S.E.2d 584, 585–86 (1988) (holding that failure to appeal a zoning decision within the prescribed period deprived the board of jurisdiction to hear the untimely appeal), overruled on other grounds by Woodard v. Westvaco Corp., 319 S.C. 240, 460 S.E.2d 392 (1995); Lominick v. Aiken, 244 S.C. 32, 44, 135 S.E.2d 305, 310 (1964) (holding that a party who failed to timely appeal the issuance of a building permit through the available administrative process could not later attack the validity of that decision in court).

With respect to Phase II, Plaintiff has likewise failed to exhaust its administrative remedies. The Phase II application remains pending before the County, and no final permit has been issued. Thus, there is not yet a final County decision from which Plaintiff could pursue the administrative appeal provided by the ULMO. Rather than allow the County to complete its review and, if necessary, pursue an administrative appeal from the County's final decision, Plaintiff seeks judicial intervention while the administrative process remains ongoing.

Plaintiff's declaratory judgment challenge to the Phase II application is also unripe. A declaratory judgment action must present an actual, justiciable controversy rather than a dispute that is contingent, hypothetical, or abstract. Orr v. Clyburn, 277 S.C. 536, 542, 290 S.E.2d 804, 807 (1982). Here, the County may approve the Phase II application, deny it, approve it subject to conditions, or otherwise resolve the issues raised by Plaintiff through the administrative process. Until the County completes that process and renders a final decision, Plaintiff seeks judicial determination of a dispute that may be eliminated or materially altered by the County's final administrative action.

ELECTRONICALLY FILED - 2026 Sep 14 5:35 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

Plaintiff's invocation of the Declaratory Judgment Act does not permit it to bypass an otherwise applicable administrative review process. See Tourism Expenditure Rev. Comm. v. City of Myrtle Beach, 403 S.C. 76, 82, 742 S.E.2d 371, 375 (2013) (holding that the Declaratory Judgments Act could not be invoked to circumvent the exclusive statutory procedure established by the legislature for resolving the dispute). Accordingly, Plaintiff cannot avoid the administrative remedies applicable to its claims merely by seeking declaratory relief.

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

Plaintiff Cannot Satisfy the Requirements for Preliminary Injunctive Relief

"An injunction is a drastic remedy issued by the court in its discretion to prevent irreparable harm suffered by the plaintiff." Scratch Golf Co. v. Dunes W. Residential Golf Props., 361 S.C. 117, 121, 603 S.E.2d 905, 907 (2004). "A preliminary injunction should issue only if necessary to preserve the status quo ante, and only upon a showing by the moving party that without such relief it will suffer irreparable harm, that it has a likelihood of success on the merits, and that there is no adequate remedy at law." Poynter Invs. v. Century Builders of Piedmont, 387 S.C. 583, 586–87, 694 S.E.2d 15, 17 (2010). Plaintiff must establish that: (1) it would suffer irreparable harm if the injunction is not granted; (2) it will likely succeed on the merits of the litigation; and (3) there is an inadequate remedy at law. Scratch Golf, 361 S.C. at 121, 603 S.E.2d at 907.

A party seeking a preliminary injunction must act swiftly and not sleep on its rights. Rabon v. Mali, 289 S.C. 37, 40, 344 S.E.2d 608, 610 (1986) (no equitable relief when a party, knowing its rights, causes its adversary to incur expenses, enter into obligations, or otherwise change position before asserting a claim for enforcement, "especially if an injunction is [requested]");

ELECTRONICALLY FILED - 2026 Sep 14 5:35 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

Janasik v. Fairway Oaks Villas Horizontal Prop. Regime, 307 S.C. 339, 344–45, 415 S.E.2d 384, 387–88 (1992) (no equitable relief where there was a failure to bring a claim for enforcement until after adversary spent significant sums on improvements).

Plaintiff Cannot Establish that Its Members Will Suffer Irreparable Harm

To obtain a preliminary injunction, Plaintiff must establish that it will suffer irreparable harm in the absence of injunctive relief. Scratch Golf, 361 S.C. at 121, 603 S.E.2d at 908. Speculative or prospective concerns of future injury are insufficient; the alleged harm must be immediate. See Compton v. S.C. Dep't of Corr., 392 S.C. 361, 366, 709 S.E.2d 639, 642 (2011). Moreover, a plaintiff's delay in seeking injunctive relief weighs against a claim that immediate relief is necessary. See Collins v. Sigmon, 299 S.C. 464, 468, 385 S.E.2d 835, 837 (1989) ("Equity aids the vigilant and diligent.").

Plaintiff's Delay Undermines Its Claim of Immediate and Irreparable Harm

Plaintiff's own delay undermines its claim that it will suffer immediate and irreparable harm without an injunction. Valara applied for its initial Land Disturbance Permit on May 23, 2025, and submitted its Phase I Minor Land Development application on July 11, 2025. The County issued the Land Disturbance Permit on August 25, 2025, and the Phase I Minor Land Development Permit on August 27, 2025. Thereafter, Valara obtained approved modifications to its Land Disturbance Permit and submitted its Phase II Minor Land Development application on April 6, 2026. These applications and permits were matters of public record and available through the County's Citizen Self-Service Portal.

Notably, the information concerning the nature and scope of the Project was not limited to the County's permitting records. On July 18, 2025, DES issued a public notice **identifying the facility as a data center** located at 4000 South Pine Street and stating that it would be powered

ELECTRONICALLY FILED - 2026 Sep 14 5:35 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

by twenty-four natural-gas generators. The public comment period remained open through August 16, 2025. Thus, well before Plaintiff claims its members appreciated the scope of the Project, publicly available records identified the proposed use of the property, the nature of the facility, and its proposed on-site power generation. Information concerning both the County's permitting of the Project and the nature of the proposed development was therefore publicly available more than a year before Plaintiff sought preliminary injunctive relief.

More importantly, even accepting Plaintiff's assertion that its members did not appreciate the scope of the Project until early 2026, Plaintiff still did not act promptly. Mr. Pack states that by March 2026, the "massive scale of construction" had become apparent to neighboring residents. (Pack Aff. ¶ 7.) Mr. Heath similarly states that he began to suspect that the Project was different from what he had understood in March or April 2026 (Heath Aff. ¶ 6), and Mr. Felk states that he developed concerns about the Project earlier in 2026. (Felk Aff. ¶ 9.) Yet Plaintiff did not commence this action until July 6, 2026. Plaintiff then filed an Amended Complaint on August 12, 2026, but did not move for preliminary injunctive relief until August 20, 2026. Thus, even under Plaintiff's own timeline, its members were aware of the circumstances they now contend require immediate equitable intervention for months before Plaintiff filed suit and for several additional weeks before Plaintiff sought preliminary injunctive relief.

That delay is particularly significant given the nature of Plaintiff's claimed injuries. Plaintiff alleges that its members live close to the property and have suffered from ongoing construction-related dust, noise, lighting, traffic, and other disturbances. Construction and land-disturbing activities, however, did not begin immediately before Plaintiff filed its Motion. Those activities had been occurring pursuant to County permits issued many months earlier. If those ongoing activities were causing the immediate and irreparable injuries Plaintiff now alleges, those

ELECTRONICALLY FILED - 2026 Sep 14 5:35 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

injuries would have been apparent well before Plaintiff waited until August 2026 to seek an injunction. Plaintiff cannot allow the permitting and construction process to proceed for months after its members admittedly became concerned and then characterize the same circumstances as an emergency requiring immediate equitable intervention.

Plaintiff Has Not Established That Its Alleged Injuries Were Caused by the County Actions It Challenges

Plaintiff also fails to connect its alleged injuries to the County actions challenged in this case. Plaintiff alleges that its members have experienced dust, noise, lighting, traffic, and other disturbances associated with construction of the Project. However, the existence of those conditions does not establish that they were caused by the County's classification of the Project as a Minor Land Development. Plaintiff has not shown that classifying the Project as a Major Land Development would have prevented the construction-related conditions of which its members complain, or that those conditions would not have occurred had the Project proceeded through the Major Land Development process.

The same problem exists with Plaintiff's allegations concerning grading. Plaintiff contends that grading occurred outside the area covered by the Phase I Land Development Permit and therefore characterizes that activity as unauthorized. As set forth above, however, land development permitting and land disturbance permitting are separate County processes, and Valara obtained Land Disturbance Permits authorizing grading and other land-disturbing activities within the areas covered by those permits. The fact that grading occurred outside the boundaries of the Phase I Land Development Permit does not establish that the grading was unauthorized or that it caused Plaintiff's alleged injuries. The record establishes that the land-disturbing activities at issue occurred within the area authorized by Valara's Grading/Storm Water Permit and approved modifications, with the exception of approximately two acres identified during a County site visit.

ELECTRONICALLY FILED - 2026 Sep 14 5:35 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

(Brown Aff. ¶ 19.) County personnel identified the approximately two-acre area during a July 22, 2026 site visit, notified representatives of Jacobs of the issue, and requested that they add the area to a permit-modification application already pending before the County. (Id.) That modification remains under review. (Id.) More importantly, Plaintiff has not established that any of the dust, noise, or other conditions alleged by its members were caused by grading within those approximately two acres, rather than by the substantially larger area in which grading and construction activities were authorized by the County. Accordingly, Plaintiff has not established that the alleged permit exceedance caused any of its claimed injuries or that injunctive relief addressing that exceedance would prevent those injuries.

Plaintiff asks the Court to prohibit the County from processing and approving the Project as a Minor Land Development and to halt development associated with that classification. However, Plaintiff has not demonstrated that requiring Major Land Development review would eliminate the dust, noise, lighting, traffic, or other construction-related conditions its members allege. Likewise, enjoining allegedly unauthorized grading would not remedy injuries attributable to grading and construction activities that were separately authorized. Without establishing that the challenged County actions caused the alleged injuries and that the requested injunction would prevent them, Plaintiff cannot establish the irreparable harm necessary for preliminary injunctive relief.

Plaintiff's Alleged Future Injuries Are Speculative

Finally, to the extent Plaintiff relies upon environmental effects, noise, traffic, or other conditions that it anticipates once the Project becomes operational, those alleged injuries are prospective and speculative. Concerns about conditions that may arise from the Project's future operation do not establish the immediate injury necessary to support preliminary injunctive relief.

ELECTRONICALLY FILED - 2026 Sep 14 5:35 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

Accordingly, Plaintiff's own delay, the public availability of information concerning the Project, the speculative nature of its alleged future injuries, and its failure to connect its present injuries to the County actions it challenges prevent Plaintiff from establishing the immediate, irreparable harm necessary for preliminary injunctive relief.

Plaintiff Cannot Establish a Likelihood of Success on the Merits

To obtain preliminary injunctive relief, Plaintiff must demonstrate a likelihood of success on the merits of its claims. Poynter Invs., 387 S.C. at 586–87, 694 S.E.2d at 17. Plaintiff cannot make that showing where its claims are not properly before the Court in the first instance. See Anders v. S.C. Parole & Cmty. Corr. Bd., 279 S.C. 206, 211, 305 S.E.2d 229, 231 (1983) (reversing an order granting injunctive relief where the plaintiffs lacked standing and the trial court therefore lacked subject matter jurisdiction). As discussed above, Plaintiff failed to exhaust the administrative remedies available to challenge the County actions at issue before seeking judicial relief. Accordingly, Plaintiff cannot establish a likelihood of success on claims that are not properly before the Court. Even if the Court reaches the merits of Plaintiff's claims, Plaintiff cannot establish that the County violated the ULMO.

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

Even if Plaintiff had exhausted its administrative remedies, Plaintiff cannot establish that the County violated the ULMO by classifying the Valara project as a Minor Land Development. The ULMO identifies the types of development classified as Major Land Developments and expressly classifies all other uses not classified as Major as Minor Land Developments. Ordinance No. O-99-015, § 1.02. Nothing in the ULMO provides that a development becomes a Major Land Development based solely upon its acreage, square footage, cost, investment, or overall scale. (See Oakman Aff. ¶¶ 6–8.) Instead, as explained above, the County determines whether an application

ELECTRONICALLY FILED - 2026 Sep 14 5:35 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

constitutes a Major or Minor Land Development based upon the classifications established by the ULMO.

Plaintiff nevertheless asks the Court to disregard those classifications and conclude that the Project must be a Major Land Development because of its size and scope. The ULMO provides no basis for such a conclusion. In fact, the County has consistently processed substantial projects, including projects larger than the Valara Project, as Minor Land Developments where those projects did not fall within a Major Land Development classification. (See Oakman Aff. ¶¶ 9–10.) Plaintiff therefore cannot establish that the County violated the ULMO merely because the Project is substantial in size, scope, or financial investment. Therefore, Plaintiff cannot demonstrate a likelihood of success on Counts I and II.

Plaintiff Cannot Establish a Likelihood of Success on Its Claims Concerning Valara's Grading Activities

Plaintiff likewise cannot establish a likelihood of success on Count III based merely upon evidence that clearing or grading occurred outside the boundaries of the Phase I Land Development Permit. As set forth above, land development permitting and land disturbance permitting are separate County processes. Indeed, as Plaintiff acknowledges in its Amended Complaint, Valara obtained Land Disturbance Permits from the County authorizing land-disturbing activities on the property. The County issued those permits authorizing clearing, grading, and other land-disturbing activities within the areas covered by the permits. Plaintiff's assertion that a Land Development Permit was also required to encompass those areas does not establish that such a requirement exists under the ULMO. Accordingly, the fact that grading occurred outside the boundaries of the Phase I Land Development Permit does not establish that the grading was unauthorized or violated the ULMO.

To the extent Plaintiff relies upon the approximately two acres identified outside the

ELECTRONICALLY FILED - 2026 Sep 14 5:35 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

approved limits of disturbance, Plaintiff has not established that the land-disturbing activities within those two acres caused the injuries alleged by its members. Moreover, upon identifying that area, County personnel requested that it be included in a permit modification already pending before the County, and that modification remains under review. (Brown Aff. ¶ 19.) Thus, even assuming that grading within those approximately two acres exceeded the scope of the existing Land Disturbance Permit, that fact does not establish Plaintiff's broader claim that Valara is conducting unauthorized development activities in violation of the ULMO, particularly where the County has identified the issue and is addressing it through the existing permitting process. Accordingly, Plaintiff has not demonstrated a likelihood of success on the merits of Count III.

Plaintiff Has an Adequate Remedy at Law

An injunction is only available where there is no adequate remedy at law. Santee Cooper Resort, Inc. v. S.C. Pub. Serv. Comm'n, 298 S.C. 179, 185, 379 S.E.2d 119, 123 (1989). "The party seeking an injunction must prove it has no adequate remedy at law." Milliken & Co. v. Morin, 386 S.C. 1, 8, 685 S.E.2d 828, 832 (Ct. App. 2009). An adequate remedy at law may be provided by statute. See Santee Cooper, 298 S.C. at 185, 379 S.E.2d at 123.

Here, Plaintiff has an adequate remedy through the administrative procedures discussed above. The ULMO provides a process for an aggrieved person or party to challenge the County's land development decisions, including decisions concerning Minor Land Developments. Likewise, the County's Storm Water Management Ordinance provides an administrative process for complaints concerning the County's stormwater and land disturbance program. Plaintiff cannot establish that these remedies are inadequate simply because it failed to pursue them.

Plaintiff acknowledges the ULMO appeal process but argues that it was inadequate because Plaintiff and its members did not receive timely notice of the Phase I Land Development Permit.

ELECTRONICALLY FILED - 2026 Sep 14 5:35 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

That argument does not render the administrative remedy inadequate. Land development permits issued by the County are matters of public record, and the Phase I Land Development Permit was publicly available through the County's Citizen Self-Service Portal. Nothing in the ULMO requires individualized notice of the issuance of a Minor Land Development Permit, and Plaintiff identifies no authority establishing that the absence of such notice renders the available administrative remedy inadequate. Moreover, the Phase II application remains pending, and Plaintiff retains the ability to pursue the administrative process following a final County decision on that application.

The fact that an administrative remedy requires Plaintiff to first present its challenge to the appropriate administrative body likewise does not render that remedy inadequate. See Dunbar v. City of Spartanburg, 226 S.C. 360, 365, 85 S.E.2d 281, 283 (1954) (holding that a zoning ordinance providing for administrative review afforded an adequate remedy at law that the plaintiff was required to pursue). Plaintiff has therefore failed to establish that it lacks an adequate remedy at law and cannot satisfy this requirement for preliminary injunctive relief.

CONCLUSION

Based upon the foregoing authorities and arguments, Defendants Spartanburg County and the Spartanburg County Administrator respectfully request that the Court dismiss Plaintiff's Amended Complaint and deny Plaintiff's motion for preliminary injunction.

ELECTRONICALLY FILED - 2026 Sep 14 5:35 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

s/ Stephanie H. Burton
Stephanie H. Burton (#13089)
Gibbes Burton, LLC
308 East St. John Street
Spartanburg, SC 29302
sburton@gibbesburton.com
Telephone: 864-327-5000
Facsimile: 864-342-6884

Attorneys for Defendants Spartanburg County and Spartanburg County Administrator

September 14, 2026

ELECTRONICALLY FILED - 2026 Sep 14 5:19 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

STATE OF SOUTH CAROLINA COUNTY OF SPARTANBURG	)	IN THE COURT OF COMMON PLEAS
Concerned Citizens of Spartanburg County, Plaintiff, v. Valara Holdings, LLC, Spartanburg County, and Spartanburg County Administrator, Defendants.	)	C.A. No. 2026-CP-42-03416 **AFFIDAVIT OF LAURIE OAKMAN IN OPPOSITION TO PLAINTIFF'S MOTIONS FOR SUMMARY JUDGMENT AND PRELIMINARY INJUNCTION**

PERSONALLY APPEARED BEFORE ME, Laurie Oakman, who, being duly sworn, states as follows:

1. I am employed by Spartanburg County as the Deputy Director of Planning and Development.

2. I am familiar with the Spartanburg County Unified Land Management Ordinance ("ULMO"), the County's procedures for reviewing and processing land development applications, and the County's application of the ULMO's Minor and Major Land Development classifications.

3. The ULMO governs, among other matters, applications to develop or alter the use of land within the areas of Spartanburg County subject to the Ordinance. Section 1.02 of the ULMO provides that applications to develop or alter the use of land are classified as either Minor Land Developments or Major Land Developments. Whether an application is submitted as a Major or Minor Land Development, the information required to support the application is generally the same. The only administrative difference is that a Major Land Development application is reviewed by the Planning Commission, while a Minor Land Development application is reviewed by County staff.

ELECTRONICALLY FILED - 2026 Sep 14 5:19 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

4. Section 1.02 of the ULMO defines a "Major Land Development" as "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."

5. Section 1.02 of the ULMO defines a "Minor Land Development" as "any land development or land altering activity requiring a permit from the County other than a subdivision or Major Land Development."

6. The definitions of Minor Land Development and Major Land Development in Section 1.02 do not classify a project based upon a specified acreage, square footage, construction cost, investment amount, or other monetary threshold.

7. In administering the ULMO, the Spartanburg County Planning and Development Department determines whether an application is processed as a Minor Land Development or Major Land Development based upon the classifications and requirements set forth in the ULMO.

8. The mere fact that a project involves substantial acreage, significant square footage, or a substantial financial investment does not, standing alone, cause an application to be classified as a Major Land Development under the ULMO.

9. Spartanburg County routinely processes Minor Land Development applications involving large or costly commercial projects. The County has previously processed the following projects as Minor Land Developments:

a. BMW Manufacturing Plant (1994), involved approximately 10,000,000 square feet;

b. Amazon – RG Distribution Hwy 221 Distribution Center (2022), involved 1,019,200 square feet;

ELECTRONICALLY FILED - 2026 Sep 14 5:19 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

c. Rite Aid Distribution Center (2015), involved 901,350 square feet;

d. Keurig Green Mountain, Inc. (2018), involved 708,040 square feet;

e. Toray Composite Materials America Facility (2015), involved 650,406 square feet;

f. Apollo 17 – Ritrama (2016), involving 367,108 square feet;

g. Upstate Corporate Park (2022), involving 1.2 million square feet; and

h. Greenidge Generation LLC (2023), involving 25,824 square feet data center.

10. These examples reflect the County's ordinary administration of the ULMO and demonstrate that the physical size or financial value of a project does not, by itself, determine whether the project is classified as a Minor or Major Land Development.

11. Consistent with the ULMO and the County's ordinary administrative practices, the County processed Valara Holdings, LLC's application for Phase I of the redevelopment of the former Kohler facility as a Minor Land Development and issued a Minor Land Development Permit for Phase I. Valara Holdings, LLC subsequently submitted a Minor Land Development application for Phase II of the redevelopment, which remains under review.

12. In classifying and considering the Valara Holdings, LLC applications, the County applied the definitions in the ULMO in the same manner as it has historically.

Laurie Oakman

Laurie Oakman

Sworn to before me this 11th day of September 2026.

Notary Public for South Carolina
My Commission Expires: March 18, 2035

DANNIEL MCCRAW
Notary Public - State of South Carolina
My Commission Expires
March 18, 2035

ELECTRONICALLY FILED - 2026 Sep 14 5:18 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

STATE OF SOUTH CAROLINA COUNTY OF SPARTANBURG	)	IN THE COURT OF COMMON PLEAS
Concerned Citizens of Spartanburg County, Plaintiff, v. Valara Holdings, LLC, Spartanburg County, and Spartanburg County Administrator, Defendants.	)	C.A. No. 2026-CP-42-03416 **AFFIDAVIT OF TRAVIS BROWN IN OPPOSITION TO PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION**

PERSONALLY APPEARED BEFORE ME, Travis Brown, who, being duly sworn, states as follows:

1. I am employed by Spartanburg County as the Director of the Spartanburg County Public Works Department.

2. I am familiar with Spartanburg County's administration of its stormwater management program, including the review, issuance, inspection, and enforcement of land disturbance permits.

3. South Carolina's Stormwater Management and Sediment Reduction Regulations, S.C. Code Regs. 72-300 *et seq.*, establish requirements for stormwater management and sediment control associated with land disturbing activities. Regulation 72-305 provides that, unless otherwise exempted, no person may engage in a land disturbing activity without first submitting a stormwater management and sediment control plan to the appropriate plan approval agency and obtaining approval of that plan.

4. Spartanburg County administers this process pursuant to its Storm Water Management Ordinance, Ordinance No. O-14-29 ("Storm Water Management Ordinance").

ELECTRONICALLY FILED - 2026 Sep 14 5:18 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

5. Section 3.1 of the Storm Water Management Ordinance provides that the Engineering Division of the Spartanburg County Department of Public Works is responsible for the day-to-day coordination, implementation, and enforcement of the Ordinance.

6. Section 1.11 of the Spartanburg County Unified Land Management Ordinance ("ULMO") requires a grading / land disturbance permit approved by the Engineering Division of the Spartanburg County Public Works Department before any land-disturbing activity covered by the County's stormwater regulations may begin. Section 1.11 further provides that no grading / land disturbance permit shall be issued in the absence of an approved Storm Water Management Plan.

7. Section 3.4 of the Storm Water Management Ordinance provides that all construction activities that will result in land disturbing activities of greater than or equal to 5,000 square feet require submission of a Land Disturbance Permit Application to the Engineering Division.

8. Section 3.4 further provides that the applicant is responsible to provide a complete Land Disturbance Application Package that meets the requirements of the Storm Water Management Ordinance, the Spartanburg County Storm Water Management Design Manual, and other applicable State and Federal regulations.

9. Section 5.2 of the Storm Water Management Ordinance authorizes the County Engineer or his designee to enter and inspect properties for regular inspections, periodic investigations, monitoring, and other purposes necessary to determine compliance with the Ordinance and approved permits.

10. Spartanburg County has also adopted an Enforcement Response Plan ("ERP") that establishes procedures for responding to violations of the Storm Water Management Ordinance,

ELECTRONICALLY FILED - 2026 Sep 14 5:18 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

approved Land Disturbance Permits, and approved stormwater management plans.

11. The ERP identifies "[f]ailure to comply with a requirement, condition, or term contained in a construction permit, site development, land disturbance, or grading permit" as a permit violation. For such violations, the ERP provides that Spartanburg County may issue a Notice of Violation upon initial discovery of the violation and will conduct follow-up inspections to ensure that corrective action is provided.

12. Under the ERP, a Notice of Violation serves as a written requirement to remove violations of the Storm Water Management Ordinance, an approved Land Disturbance Permit, or an approved stormwater management plan. The Notice of Violation identifies the nature of the violation, required corrective action, and the time period for correction, and may provide notice of additional enforcement measures in the event of continued noncompliance.

13. Once a permit is issued, the applicant can perform grading on the relevant property. The applicant is not required to obtain approval from Spartanburg County's Planning Department before performing grading authorized by the land disturbance permit. Approval of a land development permit by the Planning Department is a separate process.

14. On May 23, 2025, Valara Holdings, LLC submitted a Land Disturbance Only Permit Application to the Engineering Division in connection with the redevelopment of the property located at 4000 South Pine Street.

15. On August 25, 2025, the Engineering Division issued a Grading/Storm Water Permit (LANDISTPER-0525-0743) for the Valara project, which is attached hereto as **Exhibit A**.

16. This permit authorized land disturbing activities within 84 acres.

17. The related Storm Water Approval Letter (LANDISTPER-0525-0743) is attached as **Exhibit B** and the Department of Environmental Services NPDES coverage letter is attached as

Exhibit C.

18. The approved Grading/Storm Water Permit was subsequently modified on three separate occasions by Storm Water Approval Letters dated (November 7, 2025, February 3, 2026, and May 14, 2026), which are attached as **Exhibit D**, **Exhibit E** and **Exhibit F**, to ultimately increase the limits of disturbance to a total of 169.6 acres.

19. The land disturbing activities at issue in this action were located within the area authorized by Valara's approved Grading/Storm Water permit and subsequent approved modifications to the plans, with the exception of approximately two acres. The area was observed by county personnel during a site visit on July 22, 2026. Representatives from Jacobs were notified on-site and were requested to include the area within an existing permit modification submitted to the county on July 8, 2026. The noted modification is currently in review.

20. To date, no enforcement actions have been taken on the project.

21. To date, Spartanburg County has not received a citizen complaint pursuant to Section 8.1 of the Storm Water Management Ordinance and Regulations 72-313 and 72-314 of the South Carolina Code of Regulations concerning the grading or land-disturbing activities conducted on Valara Holding LLC's property.

TRAVIS W. BROWN, P.E.

Sworn to before me this 14th day of September 2026.

LaSasha Bonner

Notary Public for South Carolina
My Commission Expires: 12/20/2032

ELECTRONICALLY FILED - 2026 Sep 14 5:18 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

EXHIBIT A

ELECTRONICALLY FILED - 2026 Sep 14 5:18 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

Spartanburg County Public Works

9039 Fairforest Rd

Spartanburg, SC 29301

Grading/Storm Water Permit (**LANDISTPER-0525-0743**)

Permit Information

Permit Type: Land Disturbance requiring NPDES Permit Coverage **Parcel Number:** 7-18-00-061.01

Work Classification: NPDES Permit

Description: These proposed improvements are for construction activities associated with the "Early Works" Phase of the project. This phase of the pr

Issue Date: 08/25/2025 **Expiration Date:** 08/25/2027

Project Name: **Permit Status:** Issued

Property Location: 4000 S PINE ST
SPARTANBURG, SC 29302

Contact Information

Engineer	Grading Contractor	Agent or Contact Person	Property Owner
Keilah Nettles	D.H. Griffin Infrastructure, LLC	Lisa Amador	Valara Holdings LLC
Home Phone: (864) 676-5226	Home Phone:	[redacted]	Home Phone: (929) 562-2958
Business Phone:	Business Phone:		Business Phone:
Mobile Phone:	Mobile Phone:		Mobile Phone:

General Information

Facility or Project Name: MOC-1

Surface Area of Land Disturbance: 84.00 **Project Type:**

CONTACT SPARTANBURG COUNTY ENGINEERING DEPARTMENT AT (864) 595-5320 TO SCHEDULE A PRE-CONSTRUCTION MEETING PRIOR TO ANY GRADING

Signature: _____ Phone Number: _____

(Grading Contractor)

Spartanburg County Engineering Inspector: _____

Inspector Phone Number: _____ **Pre-construction Meeting Date:** _____

Notes: _____

Cynthia Vega
Issued By

08/25/2025
Date

Spartanburg County Public Works

EXHIBIT B

9039 Fairforest Rd
Spartanburg, SC 29301

Storm Water Approval Letter (**LANDISTPER-0525-0743**)

ELECTRONICALLY FILED - 2026 Sep 14 5:18 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

Valara Holdings LLC

08/07/2025
Re: MOC-1
Disturbed Area: 84.00 acres

Tax Map Number: 7-18-00-061.01
Storm Water Permit Fee: $11760.00

Dear Valara Holdings LLC,

Your application for a Storm Water Permit for the referenced project has been reviewed under Delegated Authority of the State of S.C. Storm Water Management and Sediment Reduction Regulations (R72-300). This letter is for notification puposes only. An invoice will be issued separately for the Storm Water/Grading permit.

Once invoiced, the Storm Water/Grading Permit Fee can be paid online with a credit card in the Citizen Self Service (CSS) Portal or the fee may be paid for with a check, made payable to Spartanburg County, at the Spartanburg County Community Services Building at 9039 Fairforest Road Spartanburg, SC 29301. Once the **Licensed Grading Contractor has been verified,** the Storm Water/Grading Permit and Plans will be made available online in the Citizen Self Service (CSS) Portal.

Issuance of a Storm Water Permit does not create a right to install other improvements not shown on this plan. The County should be notified of any modifications to the County Reviewed Plans.

A copy of the application form and NPDES CGP Fee Schedule A has been forwarded to SCDHEC for NPDES coverage. Land disturbing activity cannot begin until coverage under the CGP is issued by SCDHEC and the Storm Water/Grading Permit has been issued by Spartanburg County. This permit will allow storm water discharge associated with construction activity to waters of the State of S.C. in accordance with provisions of the S.C Pollution Control Act and the Federal Clean Water Act. Permits from other federal, state, and or local agencies may be required to comply with NPDES and other applicable laws. Please check with your consultant to ensure that you have all necessary permits for this project.

Notify the Spartanburg County Engineering Division at (864)595-5320 as to the start date of construction. This site will be periodically inspected by field staff of the Engineering Division to ensure that the approved erosion control measures are implemented.

Sincerely,

Philip Shoolbred
Engineering Coordinator

cc: Keilah Nettles, Jacobs
Ryan Twitty, SCDHEC
Planning Department

SC DEPARTMENT of ENVIRONMENTAL SERVICES

Name of Contact
Bureau or Location
1234 Street Name Rd.
City, State, 56789

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August 21, 2025

Andrew Udin
Valara Holdings LLC
32 AVENUE OF THE AMERICAS
FL 26
NEW YORK, NY 10013-2473

RE: Valara Holdings High Performance Compute Center, Spartanburg County
NPDES Coverage Number: SCR10ZJ79

Dear Andrew Udin:

The South Carolina Department of Environmental Services (Department or SCDES) has received approval of and the Notice of Intent for the above-referenced project from **SPARTANBURG COUNTY**. Based on your submission of this documentation and in accordance with the NPDES General Permit for Stormwater Discharges from Construction Activities SCR100000 (CGP), this project has been granted coverage under the CGP on **8/21/2025 12:00:00 AM**. This project's general permit coverage number is **SCR10ZJ79**. The total disturbed area for this site is **84 acres**.

An as-built survey(s), signed and sealed by a S.C. Licensed Land Surveyor or Professional Engineer, should be submitted to **SPARTANBURG COUNTY** for all detention structure(s) on this site. The survey(s) should show grades, contours, and depths for all structure(s) and should include the elevations and dimensions of all outlet structures, including but not limited to pipes, orifices, risers, weirs, and emergency spillways. A statement signed by the project's S.C. Registered Engineer indicating that the structure(s) was installed and is operating as shown on approved plans and in approved calculations is required. If the elevations or dimensions of the structures listed above do not match those used in the approved plans, provide a certification statement signed by the project's S.C. Registered Engineer indicating that the structure, as built, will function as shown in approved calculations. A new analysis of the structure (routing) may be necessary. The as-built survey and/ or analysis must be accepted by **SPARTANBURG COUNTY** before a Notice of Termination (NOT) can be submitted to the Department.

The CGP can be downloaded at the following website: https://des.sc.gov/sites/des/files/media/document/BOW_NPDESStormwaterDischargesGP_01292021_0.pdfor you may request a copy from us via email (stormwatercgp@des.sc.gov). You are responsible for ensuring your contractor(s) complies with the approved SWPPP and the minimum requirements of the CGP. Also, you are responsible for overall compliance with the Storm Water Management and Sediment Reduction Act of 1991 (1991 Act), SC Pollution Control Act, and the Federal Clean Water Act (CWA). Failure to comply with the approved SWPPP or applicable statutes and regulations may result in enforcement actions.

You must notify this SCDES Regional Office prior to starting any land-disturbing activity. The address and telephone number of the office are as follows:

GSP EA
660 Mauldin Road Suite 100

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Greenville, SC 29607
(864) 372-3273

Inspections of this site must be performed by qualified personnel as described in Section 4.2.E of the CGP.

You should be aware that this approval is only applicable for the Stormwater Pollution Prevention Plan (SWPPP) that was submitted for this project. Any additional construction or land disturbing activity beyond the scope of the approved plans is not authorized. Any future work for this project not shown on the stamped, approved plans will require that you submit another site plan for review and approval. All major modifications require review and approval by **SPARTANBURG COUNTY**; the Department must be notified in writing by **SPARTANBURG COUNTY** of the approval of major modifications if the disturbed area changes. Minor modifications to the approved SWPPP may be made by the SWPPP preparer and do not require review and approval by the Department; these changes should be signed and dated by the SWPPP preparer. If you have a question about whether a modification is major or minor, contact the Stormwater Permitting Section at (843) 953-4300.

A copy of the stamped, approved SWPPP (including a copy the CGP, contractor certifications, inspection records, rainfall data, etc), NOI, and CGP coverage letter from SCDES must be retained and available at the construction site (or accessible within 30 minutes during normal business hours) from the date of commencement of construction activities to the date of final stabilization. If an on-site location is unavailable to store the SWPPP when no personnel are present, notice of the plan's location must be posted near the main entrance at the construction site.

All contractors who will conduct land-disturbing activities at the site must complete a Contractor Certification Form. You are also responsible for listing all contractors in the SWPPP and for holding a pre-construction conference with each contractor before they can conduct land-disturbing activity at the site.

The Department may conduct periodic inspections of your site. Any violations found during these inspections may result in enforcement action.

This NPDES coverage should be terminated by the permittee when one of the conditions listed in Section 5.1 of the CGP has been met. You must submit a Notice of Termination (NOT) to cancel your NPDES coverage under the CGP. Please see section 5.1 of the CGP for additional information required to be submitted with the NOT.

You are responsible for obtaining any other federal, state, or local permit that may be required for this project. In particular, any permits through the U.S. Army Corps of Engineers for the placement of fill material in Waters of the United States. Please note we have not sent a copy of this letter to any county or city building official. You must send a copy of this letter to these agencies, if necessary.

If material excavated during construction activities leaves the site, a mine operating permit may be needed. You are responsible for contacting the Mining and Reclamation Section to determine if a mining permit is required for the site. The Mining and Reclamation Section can be reached at (803)898-1362 or via e-mail at :AskMines@des.sc.gov.

S.C. Code Ann. § 48-6-30(D)(2) provides, "Within thirty calendar days after the mailing of a decision [pursuant to S.C. Code Ann.§ 48-6-30(D)(1)], an applicant, permittee, licensee, certificate holder, or affected person desiring to contest

the department decision may request a contested case hearing before the Administrative Law Court, in accordance with the Administrative Procedures Act."

NOTE: As of April 7, 2025, the ePermitting system will officially accept applications for construction stormwater. Paper copies of applications will no longer be accepted beginning May 5, 2025, moving forward.

If you have any questions or cannot access the referenced websites, please call me at (803) 898-0030.

Sincerely,

Whitney N. Davis
Stormwater Permitting Section

CC: Keilah Nettles
GSP EA

ELECTRONICALLY FILED - 2026 Sep 14 5:18 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

ELECTRONICALLY FILED - 2026 Sep 14 5:18 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

Spartanburg County Public Works

9039 Fairforest Rd
Spartanburg, SC 29301

Storm Water Approval Letter (**LANDISTPER-0925-0821**)

Valara Holdings LLC

11/07/2025

Re: MOC-1 Major Modification
Disturbed Area: 0.00 acres

Tax Map Number: 7-18-00-061.00
Storm Water Permit Fee: $1000.00

Dear Valara Holdings LLC,

Your application for a Storm Water Permit for the referenced project has been reviewed under Delegated Authority of the State of S.C. Storm Water Management and Sediment Reduction Regulations (R72-300). This letter is for notification puposes only. An invoice will be issued separately for the Storm Water/Grading permit.

Issuance of a storm water permit does not create a right to install other improvements not shown on this plan. The Count should be notified of any modifications to the County Reviewed Plans.

This permit will allow storm water discharge associated with construction activity to waters of the State of S.C. in accordance with provisions of the S.C. Pollution Control Act and the Federal Clean Water Act. Permits from other federal state and local agencies may be required to comply with NPDES and other applicable laws. Please check with your consultant to ensure that you have all necessary permits for this project.

Notify the Spartanburg County Engineering Division, at (864)595-5320 as to the start date of construction. This site will b periodically inspected by field staff of the Engineering Division to ensure that the approved erosion control measures are implemented.

Sincerely,

Philip Shoolbred
Senior Engineering Coordinator

cc: Keilah Nettles, Jacobs

ELECTRONICALLY FILED - 2026 Sep 14 5:18 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

Spartanburg County Public Works

9039 Fairforest Rd
Spartanburg, SC 29301

Storm Water Approval Letter (**LANDISTPER-1225-0868**)

Valara Holdings LLC

02/03/2026

Re: MOC-1 Major Modification
Disturbed Area: 0.00 acres

Tax Map Number: 7-18-00-061.00
Storm Water Permit Fee: $1000.00

Dear Valara Holdings LLC,

Your application for a Storm Water Permit for the referenced project has been reviewed under Delegated Authority of the State of S.C. Storm Water Management and Sediment Reduction Regulations (R72-300). This letter is for notification puposes only. An invoice will be issued separately for the Storm Water/Grading permit.

Issuance of a storm water permit does not create a right to install other improvements not shown on this plan. The Count should be notified of any modifications to the County Reviewed Plans.

This permit will allow storm water discharge associated with construction activity to waters of the State of S.C. in accordance with provisions of the S.C. Pollution Control Act and the Federal Clean Water Act. Permits from other federal state and local agencies may be required to comply with NPDES and other applicable laws. Please check with your consultant to ensure that you have all necessary permits for this project.

Notify the Spartanburg County Engineering Division, at (864)595-5320 as to the start date of construction. This site will b periodically inspected by field staff of the Engineering Division to ensure that the approved erosion control measures are implemented.

Sincerely,

Philip Shoolbred
Senior Engineering Coordinator

cc: Keilah Nettles, Jacobs

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Spartanburg County Public Works

9039 Fairforest Rd
Spartanburg, SC 29301

Storm Water Approval Letter (**LANDISTPER-0226-0900**)

Valara Holdings LLC

05/14/2026

Re: MOC-1 High Performance Compute Center
Disturbed Area: 169.60 acres

Tax Map Number: 7-18-00-061.00
Storm Water Permit Fee: $24744.00

Valara Holdings LLC,

Your application for a Storm Water Permit for the referenced project has been reviewed under Delegated Authority of the State of S.C. Storm Water Management and Sediment Reduction Regulations (R72-300). This letter is for notification puposes only. An invoice will be issued separately for the Storm Water/Grading permit.

The Storm Water/Grading Permit Fee can be paid online with a credit card in the Citizen Self Service (CSS) Portal or the fee may be paid for with a check, made payable to Spartanburg County, at the Spartanburg County Community Services Building at 9039 Fairforest Road Spartanburg, SC 29301. Once the **Licensed Grading Contractor has been verified,** the Storm Water/Grading Permit and Plans will be made available online in the Citizen Self Service (CSS) Portal.

Issuance of a storm water permit does not create a right to install other improvements not shown on this plan. The Count should be notified of any modifications to the County Reviewed Plans.

This permit will allow storm water discharge associated with construction activity to waters of the State of S.C. in accordance with provisions of the S.C. Pollution Control Act and the Federal Clean Water Act. Permits from other federal state and or local agencies may be required to comply with NPDES and other applicable laws. Please check with your consultant to ensure that you have all necessary permits for this project.

Notify the Spartanburg County Engineering Division at (864)595-5320 as to the start date of construction. This site will be periodically inspected by field staff of the Engineering Division to ensure that the approved erosion control measures are implemented.

Sincerely,

Philip Shoolbred
Senior Engineering Coordinator

cc: Keilah Nettles, Jacobs

ORDINANCE NO. O-26-26

AN ORDINANCE IMPOSING A MORATORIUM ON THE ACCEPTANCE, PROCESSING OR APPROVAL OF DEVELOPMENT APPLICATIONS FOR DATA CENTERS AND ALL OTHER LAND USE OR DEVELOPMENT APPROVALS FOR DATA CENTERS.

WHEREAS, Spartanburg County Council is empowered pursuant to Title 4, Chapter 9, Section 4-9-25 of the South Carolina Code of Laws, 1976, as amended, to adopt regulations, resolutions, and ordinances not inconsistent with the Constitution and general law of the State of South Carolina (the "***State***"), including the exercise of these powers in relation to health and order in the County or respecting any subject as appears to the Council necessary and proper for the security, general welfare, and convenience of the County or for preserving health, peace, order, and good government therein, to include providing for land use regulations pursuant to Section 4-9-30 of the South Carolina Code of Laws, 1976, as amended; and

WHEREAS, the South Carolina Local Government Comprehensive Planning Enabling Act of 1994, Section 6-29-310 et seq., of the South Carolina Code of Laws, 1976, as amended, authorizes the County to enact or amend its land development regulations to guide development in accordance with existing and future needs and to protect, promote and improve public health, safety, and general welfare; and

WHEREAS, Spartanburg County Council has adopted a Performance Zoning Ordinance ("PZO") and a Unified Land Management Ordinance ("ULMO"), which collectively regulate the use of land, the location and use of buildings and other site improvements, and the construction of public facilities and private improvements related to the development of land; and

WHEREAS, inadequately regulated development of multiple data centers may have negative impacts on neighboring property owners, and the operation of such centers are dependent on adequate capacity of regulated utilities; and

WHERAS, Spartanburg County Council previously announced at its press conference on February 26, 2026 that County Council would not vote on anything else related to new data centers

until the state legislature establishes a statewide set of rules, protocols and safeguards to uniformly evaluate these projects and that its citizens' interests can best be protected with legislation in place.

NOW THEREFORE, be it ordained by the County Council of Spartanburg County (the "***Council***"), the governing body of the Spartanburg County, South Carolina (the "***County***"), as follows:

Section 1 Findings. The Council hereby adopts the above recitals as findings of fact in connection with the enactment of this ordinance (this "***Ordinance***"):

(a) Data Centers are reviewed as an industrial use in the County's zoning ordinances. The Council has determined that it is appropriate to review the areas within the County where Data Centers are allowed, and the conditions under which Data Centers may be developed, and to further consider county-wide amendments to the provisions of the PZO concerning Data Centers if necessary and prudent for the security, general welfare, and convenience of the County or for preserving health, peace, order, and good government therein.

(b) For the purpose of this ordinance, Data Centers are defined as a facility comprised of one or more buildings that houses computer systems and associated components, including telecommunications and data storages systems, that has a combined connected electrical load of one megawatt or more, and whose primary function is the storage, management and processing of data and does not include minor, ancillary server rooms, or IT closets that support a different primary business on the same premises; or a Digital Mining Asset Business in accordance with SC Code Section 34-47-10 *et seq*. of the SC Code of Laws, as amended and any other applicable law.

(c) To give the Council, the Spartanburg County Planning Commission (the "***Planning Commission***"), and the County's staff adequate time to conduct such a review and consider appropriate amendments to the PZO, the Council has determined that it is appropriate to implement a temporary moratorium on approvals related to the location of Data Centers within the County, as set forth in greater detail in this Ordinance.

Section 2 Moratorium on New Data Centers. By and through the enactment of this Ordinance, the Council hereby imposes a moratorium (as described hereby, the "***Moratorium***") on the consideration of development applications for new Data Centers, and the issuance or approval of other land use applications or approvals, as applicable, for the development of new Data Centers within the County for a period of twelve (12) months from the date of the enactment of this Ordinance. The County staff, the Planning Commission, and the County's Board of Zoning Appeals are hereby directed to hold in abeyance any development applications involving new Data Centers that are received after the first reading of this Ordinance.

Section 3 Recommendations Regarding Data Center Regulations. During the pendency of the Moratorium, County staff and the Planning Commission are hereby directed to study the areas of the County where Data Centers may be an appropriate land use and the conditions under which Data Centers may appropriately be developed within such areas. The Planning Commission and County staff are further directed to prepare and recommend appropriate amendments to the PZO to apply County-wide to development of Data Centers.

Section 4 Exemption. This Moratorium shall not apply to (1) applications for which conditional plan approval was granted prior to the effective date of this ordinance, provided such applications remain in compliance with all applicable approvals and conditions; (2) Data Centers which were issued a development permit in the eighteen (18) months preceding the adoption of this ordinance; or (3) Data Centers which will (A) be located (i) in a named industrial park or (ii) on a former industrial site (B) will not self-generate power, except for emergency back-up power and (C) be 65 IT-megawatts or less, and whose primary function is the storage, management and processing of data.

Any Data Centers falling within this exemption must demonstrate compliance with the following requirements, as if all neighboring properties were located in a Restrictive Development District, as part of its application by submitting plans addressing:

1. Light and Glare per Section 2.3.80 of the Performance Zoning Ordinance, both during and after construction;
2. Noise per Section 2.3.70 of the Performance Zoning Ordinance;
3. A noise study to establish pre-construction noise levels and that post construction levels do not increase by more 10db; and
4. A Landscaping Plan that demonstrates the site is in compliance with Article 6 of the Performance Zoning Ordinance

Additionally, any new Data Center permitted under this exception shall not be located on the same parcel as any other Data Center, or within the same industrial park, or within one (1) mile of any other Data Center.

Furthermore, any Data Centers falling within the exemption above shall enter into a development agreement, in accordance with S.C. Code of Laws § 6-31-10 *et. seq.*, to the extent applicable.

Section 5 Pending Ordinance Doctrine. This Ordinance is subject to the Pending Ordinance Doctrine.

Section 6 Moratorium Extension. The Council hereby finds and determines that the Moratorium imposed hereby may be extended by resolution of the Council.

Section 7 Severability. If any one or more of the provisions of this Ordinance should be contrary to law, then such provision shall be deemed severable from the remaining provisions and shall in no way affect the validity of the other provisions of this Ordinance.

Section 8 Repealer. All ordinances, resolutions or parts of any ordinances or resolutions inconsistent or in conflict with the provisions of this Ordinance are hereby repealed to the extent of the conflict or inconsistency. Nothing in this Ordinance shall be construed to affect any suit or proceeding impending in any court, or any rights acquired or liability incurred, or any cause of action acquired or existing, under any act or ordinance hereby repealed; nor shall any just or legal right or remedy of any character be lost, impaired or affected by this Ordinance, except as expressly set forth herein and as may be permitted under State law.

Section 9 **Effect.** Subject to its applicability in advance of third reading pursuant to the Pending Ordinance Doctrine, this Ordinance shall be effective upon third and final reading by the Council.

DONE AND ENACTED IN COUNCIL DULY ASSEMBLED, this 21st day of September 2026.

SPARTANBURG COUNTY, SOUTH CAROLINA

[SEAL]

B. Cole Alverson, County Administrator

ATTEST:

Angela G. Walker, Clerk to Council

First Reading: June 22, 2026
Second Reading: July 20, 2026
Public Hearing: July 20, 2026
Third Reading: September 21, 2026

RECEIVED
Oct 20 2026
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

J. Derham Cole, Jr., Circuit Court Judge

Case No. 2026-CP-42-03416

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

Respondent,

v.

Concerned Citizens of Spartanburg County,

Appellant.

NOTICE OF APPEAL

Concerned Citizens of Spartanburg County appeals the order of the Honorable J. Derham Cole, Jr., dated October 6, 2026 (Exhibit 1). Appellant received written notice of entry of this order on October 6, 2026.

October 20, 2026

s/ Catherine Wannamaker
Catherine Wannamaker (S.C. Bar No. 102895)
Susie Carlson (S.C. Bar No. 106396)
Carl Brzorad (S.C. Bar No. 105413)
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Attorney for Spartanburg County and
Spartanburg County Administrator

CERTIFICATE OF SERVICE

I hereby certify that on October 20, 2026, a copy of the Notice of Appeal and accompanying exhibit was served on counsel for all Respondents through the Court's electronic filing system and by email.

s/ Catherine Wannamaker
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Attorney for Appellant Concerned Citizens of Spartanburg County

RECEIVED
Oct 20 2026
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED
Oct 30 2026
SC Court of Appeals

APPEAL FROM THE SOUTH CAROLINA PUBLIC SERVICE COMMISSION

Docket Number 2026-158-E

Valara Holdings, LLC

Respondent,

v.

Concerned Citizens of Spartanburg County and Southern Alliance for Clean Energy,

Appellants.

NOTICE OF APPEAL

Concerned Citizens of Spartanburg County and the Southern Alliance for Clean Energy appeal Order No. 2026-525 (Exhibit A), issued by the South Carolina Public Service Commission on September 14, 2026, and Order No. 2026-659 (Exhibit B), issued on October 23, 2026, denying their Motion for Reconsideration and/or Rehearing.

October 30, 2026

s/ Kate Mixson
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Susie Carlson (S.C. Bar No. 106396)
Frank S. Holleman III (S.C. Bar No. 2564)
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