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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

IN THE ORIGINAL JURISDICTION

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

Concerned Citizens of Spartanburg County, ... Petitioner,

v.

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

PETITIONER CONCERNED CITIZENS OF SPARTANBURG COUNTY'S REPLY IN SUPPORT OF PETITION FOR EXTRAORDINARY WRIT

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INTRODUCTION

In responding to Petitioner's request for an extraordinary writ, Respondents Valara and Spartanburg County try to bury the central issue in procedural minutiae: that the Circuit Court's ruling deprives neighboring citizens of judicial review, and without an extraordinary writ, construction may render this case moot before an appellate court can correct that grave error.

Valara makes clear that it continues to rapidly build its data center and power plant while this case proceeds. And it admits that it has already done substantial irreparable harm, which cannot be undone. Valara Return at 16 ("***[T]rees have already been cut down, and an injunction cannot bring them back***." (emphasis added)); *Amoco Prod. Co. v. Vill. of Gambell*, 480 U.S. 531, 545 (1987) ("Environmental injury, by its nature, can seldom be adequately remedied by money damages and is often permanent or at least of long duration, *i.e.,* irreparable."). Yet in the same breath, Valara suggests that finishing construction during the lengthy appellate process ***may not*** moot the case, making a writ from this Court unnecessary. Tellingly, Valara does not deny that it will likely finish construction during the appeal, and it carefully leaves the door open to argue that the case is moot if and when that happens. Respondents' position is both contradictory and transparently evasive; it is designed to avoid judicial review at any stage of this litigation.

In reality, although substantial irreparable harm has already been done, it is not too late to stop further damage. But if Valara is allowed to complete construction during the appellate process, as it daily strives to do, the many harms to Petitioner's members will be made permanent. Moreover, the Circuit Court's indefensible ruling will stand: that neighbors of heavy industrial projects lack standing to seek judicial review of the legality of those projects in their backyards, even when they suffer the exact harms long recognized by this Court's precedents.

Respondents' arguments boil down to three baseless positions.

First, Respondents seek to recast ***their concealment of a utility-scale power plant***—for nearly eight months after permits issued and construction began—as "delay" by Petitioner. Under their theory, Petitioner—a group of local neighbors and citizens—should have filed administrative appeals and litigation when the first shovel hit the ground, despite not knowing basic details about the project, which Respondents concealed. No law required Petitioner to appeal a "minor" permit authorizing the "interior remodeling" of a toilet factory, App'x at 183, in order to file suit against the total transformation of the site into a power plant and data center.

Second, Respondents add another futile procedural hurdle: they say Petitioner should have returned to the Circuit Court for an injunction, again, before seeking a writ from this Court. Yet the Circuit Court has already (wrongly) concluded that it lacks authority to hear the case at all, dismissed the case, and—in Respondents' words—denied "the same preliminary injunction" that Petitioner now seeks from this Court. Valara Return at 1. Neither the appellate rules nor the governing case law require a party to repeat a request that the lower court has clearly concluded it will not grant.

Third, Respondents contend that Petitioner is both too early ***and*** too late to seek relief. They insist that Petitioner must wait until the County issues another permit for the project, all while construction continues and may finish during the appeal—including under a "conditional approval" of the very permit Petitioner supposedly must await. App'x at 422. At the same time, Valara argues that so much environmental damage has already occurred that injunctive relief would be meaningless. The Court should not endorse this contradictory attempt to foreclose any judicial review.

The Petition is procedurally proper and timely. Section 6-29-950(A) of the Planning Enabling Act expressly authorizes injured neighbors to go directly to court to stop existing or

"proposed" construction that violates local ordinances. Petitioner's members are suffering the prototypical injuries to property rights and the environment that this Court has long held establish standing. The Circuit Court's ruling nullifies Petitioner's statutory rights and volumes of this Court's precedents. Petitioner need not sit on its hands while Valara causes further irreversible damage in order to correct these grave errors.

This is the extraordinary case that warrants an extraordinary writ. It presents issues of statewide public importance: whether neighboring property owners may obtain judicial review of industrial projects before construction forecloses meaningful relief, and whether data centers and power plants may flout public transparency and the law. The ordinary appellate and administrative paths cannot preserve these issues; Valara will likely complete construction during the appellate process, and there is no administrative vehicle to review this project as a whole. The Court should issue a writ to preserve the status quo, protect appellate jurisdiction, and prevent further irreversible harm while Petitioner appeals the Circuit Court's erroneous order.

ARGUMENT

I. The Petition for an Extraordinary Writ is Procedurally Proper Because Returning to the Circuit Court is Futile.

Respondents first argue that Petitioner should have returned to the Circuit Court for an injunction for a second time before filing its Petition with this Court. Valara Return at 11; County Return at 12. But the Circuit Court had already dismissed the case after concluding that Petitioner lacked standing and, in Respondents' words, denied "the same preliminary injunction" sought here. Valara Return at 1. The rules do not require a futile second application "[w]hen the district court's order demonstrates commitment to a particular resolution." *Chemical Weapons Working Grp. v. Dep't of the Army*, 101 F.3d 1360, 1362 (10th Cir. 1996); *accord, e.g.*, *Walker v. Lockhart*, 678 F.2d 68, 70 (8th Cir. 1982) (earlier ruling from trial court that was incompatible

with injunctive relief made it "unnecessary for [plaintiff] to apply first to the district court for injunctive relief" pending appeal); *McClendon v. City of Albuquerque*, 79 F.3d 1014, 1020 (10th Cir. 1996) (where the lower court's "resolve" was clear, "it would serve little purpose to require another application").[1]

Rule 245, SCACR, authorizes an extraordinary writ where, as here, the proceedings in the lower courts materially prejudice the parties' rights and implicate the public interest. Seeking relief directly from this Court is also consistent with Rule 62(g), SCRCP, which excuses an initial application to the trial court for an injunction pending appeal when doing so "is not practicable." Returning to the Circuit Court would have been futile and impractical: the court had just found that Petitioner lacked standing and the court lacked authority to even hear the case; thus, it could not have granted an injunction pending appeal. *See Hardin v. Cooper*, 725 F. Supp. 284, 285 (D.S.C. 1989); *S.C. State Conf. of the NAACP v. Weaver*, 181 F.4th 353, 377 (4th Cir. 2026). Respondents confirm the futility of returning to the lower court by repeatedly emphasizing that it had already rejected the "same" relief requested in the Petition. Valara Return at 1, 22; County Return at 11.

Given the gravity of the Circuit Court's errors and ongoing irreparable harms to Petitioner's members, *see infra* pp. 9–11, this is the precise sort of case where higher courts do not require the petitioner to go back to the trial court, which has already made up its mind. *See, e.g.*, *Homans v. City of Albuquerque*, 264 F.3d 1240, 1243 (10th Cir. 2001) ("[W]e have excused this requirement [to first seek an injunction pending appeal in the trial court] where another application to the district court would serve little purpose. We do so here because of the

[1] Where, as here, the South Carolina rule is "substantially the same" as the federal rule, the Court "may consider federal cases in interpreting the rule." *State v. Murdaugh*, 448 S.C. 1, 25–26, 931 S.E.2d 294, 307 (2026).

immediacy of the problem and the district court's legal error"). Returning to a lower court that is definitively resolved against injunctive relief would only prolong the irreparable injuries from ongoing construction. This is just the sort of circumstances that justify this Court's use of its "express grant of original power to issue [an] order[] of injunction." Jean Hoefer Toal et al., APPELLATE PRACTICE IN SOUTH CAROLINA 329 (3d ed. 2016).

II. Petitioner Faces Irreparable Harm and Did Not Unreasonably Delay.

Respondents argue that Petitioner cannot show irreparable harm because it improperly delayed seeking injunctive relief and because its harms "are not immediate and irreparable." Valara Return at 15. Respondents' delay argument leaves out critical details regarding the timing of this project—namely, that Respondents did not disclose that Valara was building a massive power plant until late April of 2026. Petitioner filed its case less than three months after this critical fact was disclosed, and sought an injunction less than four months after this disclosure—mere weeks after filing their case. Respondents cannot recast their own concealment of the details of this project as delay by Petitioner.

The facts here only show diligence. Petitioner is a community group of Spartanburg citizens who came together to take action once they learned the truth of what was being built in the middle of their neighborhoods. Once the neighbors learned of Valara's actual plans, they had to organize; lobby the County to hold the public process required by law for this Major Land Development (to no avail); obtain counsel; investigate basic facts about this project; analyze legal claims; draft pleadings and affidavits; and seek injunctive relief. Despite these obstacles, Petitioner filed its case less than three months, and sought an injunction less than four months, after disclosure of the utility-scale power plant in late April 2026. Given the circumstances, Petitioner acted reasonably and diligently—and well within the time frames condoned by courts for seeking injunctive relief. *E.g.*, *Gold v. Eng'g Contractors Inc.*, 831 F. Supp. 2d 856, 860 (D.

Md. 2011) ("[T]he Court concludes that the four-month delay is per se insufficient to warrant a denial of Petitioner's request for injunctive relief.").

Respondents' other irreparable harm arguments are riddled with internal contradictions. They argue both that Petitioner waited too long to challenge the project, but also argue that it is too early to challenge the project. They argue both that Valara has already done too much environmental damage at the site for an injunction to be meaningful to Petitioner, Valara Return at 16, but also that finishing construction on appeal somehow would not foreclose meaningful relief. According to Valara, the existing damage is already irreparable, yet Petitioner must wait longer still for relief—both through a lengthy appellate process and until, at some indeterminate point, the County issues a second permit. *Id.* at 21. In making these incoherent arguments, Respondents dismiss the very real, obvious, and irreparable harms of this project to the neighbors as the same harms facing the "general public"—in plain contravention of this Court's precedents. *Infra* pp. 11–14.

a. Petitioner Did Not Unreasonably Delay

Petitioner did not unreasonably delay here. Delay is a fact-specific inquiry, *Rabon v. Mali*, 289 S.C. 37, 40, 344 S.E.2d 608, 610 (1986), and the facts here show only diligence.

Contrary to Valara's arguments, the scope of the Project was not "both knowable and fully known to the public and Petitioner's members early on in its development." Valara Return at 15.[2] As multiple news outlets have reported, the County and Valara have attempted to hide the true nature of the project from the beginning—a data center transparency failure that has played

[2] *See also* Kathleen Parker, *A $2.8 Billion Data Center Was Kept Secret. Now Residents Are Furious*, WASHINGTON POST (July 3, 2026), https://www.washingtonpost.com/opinions/2026/07/03/south-carolina-data-center-was-shrouded-secrecy/.

out not just here, but across South Carolina, underscoring the public importance of these issues. Petition at 3–4.[3]

Here, Valara's First Minor Land Development Permit in August 2025 stated that it would only do "interior remolding" of an old "toilet factory." App'x at 183; Hr'g Tr. At 5:17–19. Valara does not dispute that its proposal to build a utility-scale power plant with massive toxic air emissions was not disclosed to the public until late April 2026—and not by Respondents, but by investigative reporters. Petition at 5 & n.6. Also in April 2026, Valara filed for a Second Land Development permit to construct four new buildings and a "power yard"—in other words, a utility-scale power plant, App'x at 255—drastically expanding the scope of the project beyond remodeling a toilet factory, as initially disclosed. App'x at 215. Thus, only in late April 2026 did local residents, including Petitioner's members, know the full scope of this massive power plant and data center.[4]

Petitioner filed its case less than three months later and sought an injunction less than four months later. As this Court has held, a party does not forfeit their ability to bring suit simply because they take several months to build their case. *See, e.g.*, *Gibbs v. Kimbrell*, 311 S.C. 261, 269, 428 S.E.2d 725, 730 (plaintiffs acted with "reasonable diligence in initiating their suit within five months" of key facts); *Gold*, 821 F. Supp. 2d at 860 ("[T]he Court concludes that the four-month delay is per se insufficient to warrant a denial of Petitioner's request for injunctive relief."). During the three months before filing, Petitioner—a collection of neighbors—

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[3] *See, e.g.,* Michelle Alfini, *Advocate Addresses Proposed Legislation on Data Center Growth in SC*, WSOC-TV (Mar. 19, 2026), https://perma.cc/NF7G-89BJ.

[4] The County notes that SCDES issued an air permit for natural gas generators in July 2025. County Return at 14. Needless to say, a permit for natural gas generators is not remotely similar to a 457-megawatt power plant large enough to fuel every home in Spartanburg County—which was not disclosed until late April 2026. App'x at 389.

organized, advocated to the County, and consulted attorneys. *See* App'x at 182–88.[5] Given the need for careful review of permitting documents and analysis for this large project, Petitioner acted diligently.

Respondents cite no decision holding that three months to file suit—or four months to seek an injunction—constitutes unreasonable delay. Their authorities involve materially longer and fundamentally different delays. *Collins v. Sigmon* concerned a judgment-collection action that the plaintiff failed to prosecute for more than a year before attempting to revive it two years later. 299 S.C. 464, 465, 469, 385 S.E.2d 835, 838 (1989). It neither involved an extraordinary writ nor applied the preliminary-injunction standard. *Quince Orchard Valley Citizens Ass'n v. Hodel* involved a nine-month delay. 872 F.2d 75, 79–80 (4th Cir. 1989). Here, Petitioner sought an injunction mere weeks after filing suit and less than four months after learning of the project's true scope.

Respondents cannot conceal the project's true scope and then fault Petitioner for failing to act sooner. A defendant that "openly defies known rights" is "not in a position" to demand "the most instant conceivable resort to the courts." *Archambault v. Sprouse*, 218 S.C. 500, 509, 63 S.E.2d 459, 463 (1951). Petitioner acted promptly once the power plant was disclosed, and Respondents' lack of transparency reinforces the statewide importance of this dispute.

b. Petitioner's Members Are Suffering Irreparable Injuries

As explained in Petitioner's opening brief, Petitioner's members live next door to Valara's active construction site. Petition at 14–16. Members are suffering, and will continue to suffer, a plethora of irreparable injuries from this project—including construction dust coating their homes, vehicles, and properties, which forces asthmatic and ill neighbors to retreat indoors;

[5] *See also* Parker, *supra* note 2.

loud noises and bright lights at all hours of the day; the clear-cutting of dozens of acres of trees and dead wildlife next to their homes, which members used to observe and enjoy; and the imminent prospect of a utility-scale power plant next door which—by Valara's own estimates—will spew hundreds of tons of toxic and carcinogenic pollution into the air next to their homes. App'x at 166. By definition, those who live closest to this power plant will suffer the most exposure to its air pollutants every day that it operates.

Valara's own brief confirms that these injuries are irreparable. It argues that "***the trees have already been cut down, and an injunction cannot bring them back.***" Valara Return at 16 (emphasis added). That concession describes classic environmental injury: harm that "can seldom be adequately remedied by money damages and is often permanent or at least of long duration, ***i.e., irreparable***." *Amoco Prod. Co. v. Vill. of Gambell*, 480 U.S. 531, 545 (1987) (emphasis added).

Valara also argues that harms to members' use and enjoyment of their properties and neighborhood does not give rise to irreparable injury. Valara Return at 18. It is hard to fathom that Valara continues to insist that harms from living next to a massive industrial construction site are not irreparable: harms such as the impacts of heavy machinery, loud and intrusive noises at all hours, "terrible" amounts of dust coating homes and vehicles, "incredibly" bright lights at night, and the clear-cutting of acres trees and harms to wildlife next door. App'x at 270, 278–79, 286, 311. There are textbook irreparable injuries to the use and enjoyment of property—for example, members cannot recuperate the time lost enjoying the outdoors on their own properties because Valara's construction dust has forced them indoors. *E.g.*, *AJG Holdings, LLC v. Dunn*, 382 S.C. 43, 52, 674 S.E.2d 505, 509 (S.C. Ct. App. 2009) (holding that "noise and traffic in the neighborhood" from a commercial project "interfered with [the neighbors'] right to the use and

enjoyment of their property and is sufficient to prove [the neighbors] suffered an irreparable harm."). There is, frankly, no serious dispute that members are suffering irreparable harm.

Respondents nevertheless characterize these injuries as generalized grievances. But the air is being polluted, the trees are being felled, and wildlife is being harmed next to members' homes, directly impairing their use and enjoyment of their property and neighborhood. App'x at 259–262, 293–95, 300–01, 309–12. These harms do not "fall indiscriminately upon every citizen"—the "injury will be felt directly only by those who use [the affected area] and for whom the aesthetic and recreational values of the area will be lessened by the [challenged activity]." *Sierra Club v. Morton*, 405 U.S. 727, 735 (1972). That is, Petitioner's members. Respondents' reliance on *Carnival Corp.* is misplaced because that case did not involve "adjacent or neighboring property owners." *Preservation Soc'y of Charleston v. S.C. Dep't of Health & Env't Control*, 430 S.C. 200, 214, 845 S.E.2d 481, 488 (2020).

Valara's challenge to causation fares no better. Valara Return at 19. Petitioner's members lived for decades beside a quiet, forested site; the dust, noise, lights, tree loss, and wildlife impacts began when Valara started construction. App'x at 260–62, 270–71, 277–78, 294–95, 310. Valara itself admits that it cut the trees, that it keeps lights on at night, and that its dust will persist until construction ends. Valara Return at 19. Valara has even offered "mitigation" to Petitioner's members—which would be an odd gesture if Valara were not the cause of their injuries. *See* App'x at 350, 419. These facts permit the obvious inference that Valara's project is causing members' injuries.

Respondents also overlook perhaps the most consequential injury: the loss of neighboring property owners' access to judicial review before further construction makes relief impossible. Petition at 12–13. It is well-settled in South Carolina law that "an intervening event," including

completion of construction, can moot a case where that event "renders any grant of effectual relief impossible for the reviewing court." *Sloan v. Friends of Hunley, Inc.*, 369 S.C. 20, 25–26, 630 S.E.2d 474, 477 (2006); *see also* Petition at 13; App'x at 501–06 (citing additional cases).[6] Without a writ, no court may be able to correct the Circuit Court's ruling before the project is complete. This Court may consider "the delay and inconvenience incident to appeal" when exercising its original jurisdiction. *State ex rel. Zimmerman v. Gibbes*, 171 S.C. 209, 209, 172 S.E. 130, 132 (1933).

III. Petitioner Is Likely to Succeed on the Merits of Its Appeal.

a. Petitioner Has Standing Under Settled Law

As Petitioner explained in its opening brief, members are suffering the paradigmatic injuries that neighbors face when a large industrial project is sited next door—the exact harms that this Court has long recognized as legal injury to property rights,[7] and the exact harms to the environment that this Court has long held to constitute injury-in-fact.[8] If Petitioner's members do

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[6] Federal cases also support the idea that ongoing construction can moot an appeal. *See Bayou Liberty Ass'n v. U.S. Army Corps of Engineers*, 217 F.3d 393, 396 (5th Cir. 2000) ("When a party seeks an injunction to halt a construction project the case may become moot when a substantial portion of that project is completed."); *Neighborhood Transp. Network v. Pena*, 42 F.3d 1169, 1172 (8th Cir. 1994) (finding an appeal was mooted when construction was complete); *Fla. Wildlife Fed'n v. Goldschmidt*, 611 F.2d 547, 549 (5th Cir. 1980) (holding that, in a construction case, "[w]here the activities sought to be enjoined have already substantially occurred and the appellate court cannot undo what has already been done, the action is moot").

[7] *E.g.*, *Babb v. Lee Cnty. Landfill, SC, LLC*, 405 S.C. 129, 139–40, 747 S.E.2d 468, 473–74 (2013) (neighbors may sue to stop "an interference with the interest in the private use and enjoyment of land," such as "work at a nearby quarry [that] threw dust and dirt onto [plaintiff's] property, and subjected the home's inhabitants to loud noises." (citing *Davis v. Palmetto Quarries Co.,* 212 S.C. 496, 498, 48 S.E.2d 329, 330 (1948))); *AJG Holdings, LLC v. Dunn*, 382 S.C. 43, 52, 674 S.E.2d 505, 509 (S.C. Ct. App. 2009) ("[N]oise and traffic in the neighborhood . . . interfered with [neighbors'] right to the use and enjoyment of their property," supporting legal claim).

[8] *E.g.*, *Sea Pines Ass'n for Protection of Wildlife, Inc. v. S.C. Dep't of Nat. Res.*, 345 S.C. 594, 601–02, 550 S.E.2d 287, 291–92 (2001) ("South Carolina case law has specifically recognized

not have standing to challenge this project, no one does—indeed, no property owner would have standing to challenge a harmful industrial project in their backyard, no matter how unlawful.[9]

Respondents do not cure the Circuit Court's grave errors on standing. The court simply ignored this Court's voluminous precedents, *see supra* notes 7–8 (collecting cases), which recognize that injuries to the use and enjoyment of private property, and environmental injuries to areas used by the plaintiff, both constitute injuries-in-fact. App'x at 484–93. Respondents repeat that omission, failing to meaningfully address these precedents in their briefing.

Respondents' reliance on *Carnival* also fails. This Court has already distinguished that decision on the precise grounds at issue here—because *Carnival* did not involve "adjacent or neighboring property owners." *Preservation Soc'y of Charleston v. S.C. Dep't of Health & Env't Control*, 430 S.C. 200, 214, 845 S.E.2d 481, 488 (2020). The allegations in *Preservation Society*—including dust "covering their homes that [forces members] to retreat indoors because of breathing problems," *id.* at 207, 845 S.E.2d at 484—are virtually identical to the injuries here. App'x at 260–62, 294–95, 311. And the Court in that case expressly held that "[t]hose living near the project are most likely to be impacted in ways that are distinguishable from the impacts generally falling upon the public at large." *Id.* at 216, 845 S.E.2d at 489. Valara's quibble that *Preservation Society* started as an administrative proceeding, *see* Valara Return at 23, is irrelevant to the Court's holding at issue—that clear holding is still applicable here.

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an injury to one's aesthetic and recreational interests in enjoying and observing wildlife is a judicially cognizable injury in fact."); *Smiley v. S.C. Dep't of Health & Env't Control*, 374 S.C. 326, 332, 649 S.E.2d 31, 34 (2007) ("The averments in [plaintiff's] affidavit that he recreates and views nature on the beach on an almost daily basis is a sufficient allegation of a 'concrete and particularized invasion.'").

[9] The "specially damaged" requirement in S.C. Code § 6-29-950(A) incorporates the standard Article III injury-in-fact requirement, *Carnival Corp. v. Historic Ansonborough Neighborhood Ass'n*, 407 S.C. 67, 79, 753 S.E.2d 846, 852 (2014), which applies to all of Petitioner's claims.

Respondents' claim that members' injuries are mere "generalized grievances" creates an absurd result: that the largest projects injuring the most people are immunized from suit precisely because of their widespread harms. This has never been the law. *Fed. Election Comm'n v. Akins*, 524 U.S. 11, 24 (1998) (""[W]here a harm is concrete, though widely shared, the Court has found 'injury in fact.'").

Without law or fact (or basic common sense) to stand on, Respondents ask this Court to just ignore the facts altogether—specifically, to disregard the affidavits submitted by Petitioner's members documenting their many injuries from the project. Valara Return at 23–24. Yet this is a temporary injunction proceeding, not a motion to dismiss under Rule 12(b)(6); as such, these affidavits are properly before the Court. *E.g.*, *Floyd v. Thornton*, 220 S.C. 414, 425, 68 S.E. 2d 334, 339 (1951); *Jennings-Dill, Inc. v. Israel*, 442 S.C. 98, 109–10, 897 S.E.2d 201, 207 (S.C. Ct. App. 2024). Moreover, Respondents overlook that the County moved for dismissal under Rule 12(b)(1) for lack of jurisdiction, App'x at 403. *See Coggeshall v. Reproductive Endocrine Assocs. of Charlotte*, 376 S.C. 12, 16, 655 S.E.2d 476, 478 (2007) ("When a motion to dismiss attacks the allegations of the complaint on the issue of jurisdiction, the court is not confined to the allegations of the complaint but may resort to affidavits or other evidence to determine jurisdiction.").[10] And Respondents again ignore this Court's standing analysis in *Preservation Society*, which relied on "affidavits from some of [petitioners'] individual members." 430 S.C. at

[10] In claiming that the Circuit Court was cabined to the Amended Complaint, Valara cites *Charleston Cnty. Sch. Dist. v. Harrell*, 393 S.C. 552, 559, 713 S.E.2d 604, 608 (2011), and *Brown v. Leverette*, 291 S.C. 364, 367, 353 S.E.2d 697, 699 (1987). Those cases do not relate to standing and concern outside materials submitted in support of a motion to dismiss under Rule 12(b)(6), not 12(b)(1).

207, 845 S.E.2d at 484. Respondents cannot waive away the pesky facts that establish Petitioner's standing.[11]

Petitioner's procedural injuries also independently support standing. Members lost the right to participate before the County Planning Commission in deciding whether, and under what conditions, a data center and power plant could be built beside their homes. A plaintiff suffers an injury-in-fact when deprived of a procedure that implicates the plaintiff's concrete interests. *See Lujan v. Defs. of Wildlife*, 504 U.S. 555, 572 n.7 (1992); *Massachusetts v. EPA*, 549 U.S. 497, 518 (2007).

Petitioner need not prove that a lawful public process would necessarily have produced a different substantive result—that is the point of having the process to begin with. "[T]he fact that the [County] might well come to the same decision after abiding by the contested procedural requirement does not deprive a plaintiff of standing." *Dep't of Educ. v. Brown*, 600 U.S. 551, 561–62 (2023); *accord Massachusetts*, 549 U.S. at 518 (quoting *Sugar Cane Growers Cooperative of Fla. v. Veneman*, 289 F.3d 89, 94– 95 (D.C. Cir. 2002)) ("A litigant who alleges a deprivation of a procedural protection to which he is entitled never has to prove that if he had received the procedure the substantive result would have been altered.").

Petitioner clearly has standing. Without a writ from this Court, the case will likely become moot on appeal, and the Circuit Court's error will stand. This would prevent neighboring property owners across South Carolina from seeking judicial relief from unlawful industrial development in their backyards that injure their property and environment.

[11] In any event, the facts alleged in the Amended Complaint are more than sufficient to establish standing in their own right, as Petitioner has thoroughly demonstrated. *See* App'x at 476–481.

b. Section 6-29-950(A) Does Not Require Exhaustion—as Valara Repeatedly Conceded at Oral Argument

Respondents' attempts to rehabilitate the trial court's exhaustion holding also fail. As Petitioner explained in its petition, Section 950(A) of the Planning Enabling Act empowers neighboring property owners who are injured[12] by ordinance violations to go directly to court for injunctive relief "***in addition to other remedies***" (emphasis added). Petition at 17. The Circuit Court dismissed the case because Petitioner purportedly did not pursue "other remedies" with the County—yet the statute explicitly grants neighbors the right to go to court "in addition to" those other remedies.

Valara repeatedly conceded this point at the hearing: "***This statute says if you're an adjacent landowner, you don't have to exhaust the administrative process***." Hr'g Tr. 27:7–8 (emphasis added); *see also id.* at 52:2–6, 17–18. By requiring exhaustion despite the statutory text, the Circuit Court plainly erred—as even Valara admits. Tellingly, Valara now seeks to retract its explicit and repeated admissions at the hearing. *See* Valara Return at 27. But parties are bound by their attorneys' admissions in open court. *Pope v. Heritage Communities, Inc.*, 395 S.C. 404, 430–31, 717 S.E.2d 765, 779 (S.C. Ct. App. 2011).

Confusingly, Respondents also claim that Section 950(A) claims are reserved for challenges to "a structure or land that is used, or proposed to be used, 'in violation of' a zoning ordinance." Valara Return at 27 (quoting S.C. Code § 6-29-950(A)). That is precisely what Petitioner challenges in this case: Valara is using land next to their homes to build a Major Land Development without the Major Development Permit required by the County's Ordinance, § 1.02. App'x at 40. Sections 1.07 and 1.13 of the Ordinance prohibit the "use" or "development"

[12] As noted above, the "specially damaged" requirement under Section 6-29-950(A) imposes the standard requirement of Article III injury. *Supra* note 9.

of land without the required land development permits. *Id.* at 45–46. Valara is, quite literally, using and proposing to use this land in violation of the Ordinance. This case fits squarely within Section 950(A) of the Act.

Last, Respondents contend that Petitioner's challenge is unripe because the Second Land Development Permit is still pending before the County. Yet the statute does not require neighboring property owners who are already suffering injuries to sit idly by and wait on local administrators. Section 950(A) explicitly empowers neighbors to sue in court to stop an existing or "***proposed***" project that would violate a local ordinance (emphasis added). Respondents do not—and cannot—contend that any aspect of this project has not yet been "proposed." Petitioner's claims are not premature.

More importantly, Respondents' attempt to divide the project into artificial phases cannot evade judicial review of the project. Section 950(A) places the legality of the project as a whole before the courts.

c. Petitioner's Remaining Claims are also Properly before the Court

Although Petitioner's claims under Section 950(A) are, by themselves, sufficient to demonstrate a likelihood of success on appeal and to warrant a writ from this Court, Petitioner's remaining claims under the Declaratory Judgment Act (Count I and Count III, in part) are also ripe for review and do not require administrative exhaustion. *Contra* Valara Return at 26–28; County Return at 19–21. A declaratory judgment claim is ripe when, as here, the case presents a concrete controversy between the litigants. *Crescent Homes SC, LLC v. CJN, LLC*, 445 S.C. 164, 184, 912 S.E.2d 389, 398 (S.C. Ct. App. 2024), *reh'g denied* (Mar. 12, 2025). And this Court has long excused exhaustion when the administrative process would be futile or delay would undermine the relief sought or cause irreparable injury. *Storm M.H. ex rel. McSwain v.*

Charleston Cnty. Bd. of Trs., 400 S.C. 478, 487, 735 S.E.2d 492, 497 (2012). The Court may also excuse exhaustion requirements for cases of public importance. *Id.* (citing *Cabiness v. Town of James Island*, 393 S.C. 176, 712 S.E.2d 416 (2011), and *Curtis v. State*, 345 S.C. 557, 549 S.E.2d 591 (2001)).

Those exceptions apply here. As explained in the next section, the County's Ordinance requires a Major Land Development like Valara's to go through a public process before the County's Planning Commission to determine whether, or under what conditions, the project should proceed. Respondents seek to bypass that public process entirely, completing vast amounts of construction before disclosing basic details about the project (namely, that it includes a utility-scale power plant), and then miring local citizens in a lengthy administrative process—all while Valara continues building and will likely finish construction while citizens appeal to County administrators. Resort to the administrative process would thus prolong, or make permanent, the irreparable harm facing Petitioner's members, and forever deprive them of the public process mandated by law—and of their day in Court. Moreover, because Respondents have split this major project into multiple arbitrary "minor" permits, there is no permit appeal or administrative vehicle that could review this project as a whole Major Land Development, making the administrative process futile. Where, as here, the administrative process would cause irreparable harm and be futile, courts do not require exhaustion. *E.g.*, *Storm*, 400 S.C. at 487, 735 S.E.2d at 497.

Valara's only response to this argument is a continued insistence that it did not conceal the scope of the project before beginning construction. Valara Return at 28. As shown, that claim is false. *Supra* pp. 2, 6–7. Petitioner challenged the project upon learning of its full scope and

harm. Because waiting for further action would be futile, and would cause irreparable harm, exhaustion does not apply.

d. Valara's Project Clearly Violates the Ordinance

Respondents also argue that a 300-acre data center and utility-scale power plant qualify as a "Minor" Land Development under the County's Ordinance. Valara Return at 29; County Return at 23. The Circuit Court did not decide that issue, and the appeal concerns standing and exhaustion. The Court therefore need not resolve the project's classification to determine whether Petitioner is likely to succeed on its appeal of the dismissal. Nevertheless, the Ordinance's text strongly supports Petitioner.

The County's Ordinance requires any "Major" Land Development to be publicly reviewed by the County's Planning Commission before being built. By contrast, "Minor" Land Developments are reviewed by County staffers with no public process. App'x at 42.

The plain text of the Ordinance leaves zero doubt that Valara's project is a Major Land Development. The Ordinance provides that a Major Land Development "***includes but is not limited to*** commercial and industrial parks . . . ***and other similar developments***." Ordinance § 1.02(1) (emphasis added), App'x at 40. Exhibit A of the Ordinance lists more examples of Major Land Developments; importantly, Exhibit A also begins with the words: "Major, ***to include***," (emphasis added). App'x at 44. By its repeated and explicit terms, the Ordinance provides an illustrative and non-exhaustive list of Major Land Developments. Antonin Scalia & Bryan Garner, READING LAW: THE INTERPRETATION OF LEGAL TEXTS 132 (2012) ("The verb *to include* introduces examples, not an exhaustive list."); *United States v. Helton*, 944 F.3d 198, 206 (4th Cir. 2019) ("Both the Supreme Court and this Court have held that 'the term 'including' is not one of all-embracing definition, but connotes simply an illustrative application of the general

principle.'" (collecting cases)). In addition to the fact that "include" is not an exclusive verb, the Ordinance makes it crystal clear that the list is illustrative and not exclusive by expressly saying "not limited to." To make it triply clear, the definition concludes by sweeping in "similar developments."

Under the plain text of the Ordinance, what qualifies as a "Major Land Development" turns on the plain and ordinary meaning of the term "Major Land Development," as guided by the illustrative examples of large industrial and commercial projects. *Charleston Cnty. Parks & Rec. Comm'n v. Somers*, 319 S.C. 65, 68, 459 S.E.2d 841, 843 (1995) ("In construing ordinances, the terms used must be taken in their ordinary and popular meaning."); *Delligatti v. United States*, 604 U.S. 423, 438 (2025) (courts read statutory definitions "in light of the conventional meaning of the term it defines."). "Minor Land Development," by contrast, includes projects which are not "Major," such as a "single-family dwelling," a "sign," and a "manufactured home." App'x at 44.

By any rational reading of the Ordinance, a utility-scale power plant and 300-acre data center are a "Major Land Development." Valara's project is as "major" of a development as the mind can fathom, under the plain and ordinary meaning of those words. *See* MERRIAM-WEBSTER DICTIONARY, *Major* (2026) ("[N]otable or conspicuous in effect or scope," and "prominent or significant in size, amount, or degree."). It is a $2.8 billion project, the costliest in Spartanburg County history, which has garnered broad local and national media coverage; it involves the construction of utility-scale power plant with associated massive air emissions. Valara's project is also an "industrial park," or at the very least, is a "similar" industrial project, and thus Major. Ordinance § 1.02(1). Valara's project is nothing like the far smaller projects listed as examples of Minor Land Development.

Respondents argue that the Ordinance contains an "exhaustive" list of all Major Land Developments, and because "data center" and "power plant" are not specified on the list, they do not qualify as "Major." *See* Valara Return at 22; County Return at 23–24. This argument borders on frivolous. Respondents simply erase the words "***including but not limited to***," "***other similar developments***," and "***to include***" from the Ordinance. Most glaringly, Respondents write the words "Major" and "Minor" out of the Ordinance entirely, requiring courts to ignore the plain and ordinary meaning of those terms in favor of a technocratic definition that Respondents made up. On Respondents reading, even a nuclear testing site in downtown Spartanburg would be a "Minor Land Development," because "nuclear testing site" is not listed in Exhibit A of the Ordinance as a Major project.

The Court need not indulge Respondents' outlandish re-writing of the County Ordinance, because it is not at issue in this appeal. Suffice it to say, Respondents are wrong on this issue.

IV. Petitioner Has No Adequate Remedy at Law.

Administrative review before the Board of Zoning Appeals ("BZA") would not provide the "certain" and "complete" remedy required at law to defeat injunctive relief. *Santee Cooper Resort, Inc. v. S.C. Pub. Serv. Comm'n*, 298 S.C. 179, 185, 379 S.E.2d 119, 123 (1989). "It is not enough that there is some remedy at law, but that remedy must be as practical, efficient, and prompt as the remedy in equity." *Elridge v. Elridge*, 398 S.C. 113, 120, 728 S.E.2d 24, 27 (2012).

Due to Respondents' conduct, the administrative remedy at law is anything but certain, complete, practical, or efficient. Respondents concealed the true scope of this project—a utility-scale power plant with massive toxic air emissions—until late April 2026, nearly eight months after the administrative appeal window passed for the first minor land development permit. As a result, an administrative appeal from the first permit would have covered only the purported "interior remodeling" of a "toilet factory," App'x at 216—not the complete transformation of the

300-acre property into a power plant and a data center. Requiring neighbors to appeal every approval on the chance that a project may later change dramatically would encourage premature and unnecessary litigation.

Moreover, because Respondents cut this major project into multiple arbitrary phases of "minor" permits, ***no administrative appeal of any permit could address the full scope of this project*** as a major land development**.** *See* 30A C.J.S. Equity § 24 ("A remedy at law cannot be considered adequate, so as to preclude equitable relief, unless it covers the entire case made in a suit in equity."). This is the definition of an "[un]certain, [im]practical, [in]complete" administrative remedy—one that cannot foreclose equitable relief in the courts. *Santee Cooper*, 298 S.C. at 185, 379 S.E.2d at 123.

The proposed remedy is inadequate for another reason: it will prolong Petitioner's irreparable injuries. Respondents would have Petitioner wait for an undefined period for the County to issue the Phase II permit—all while Valara continues construction under a "conditional approval" of that very permit. App'x at 422 (County's Circuit Court brief, stating that Valara's "***development activities . . . were permitted by the conditional approval of Valara's Phase II Application***," among other things (emphasis added)). Respondents cannot contend that Valara is validly building under a "conditional approval," while hiding behind the lack of a formal permit issuance to evade judicial review. Valara has made clear that construction will continue to proceed rapidly, Valara Return at 16, meaning the neighbors will continue to suffer irreparable harms until the second permit issues. A future BZA appeal therefore is not "as practical, efficient, and prompt as the remedy in equity." *Eldridge* 398 S.C. at 120, 728 S.E.2d at 27. Nor is it sufficiently "speedy, full, and complete" to prevent permanent injury. *Crawford v. Atlantic Coast*

Lumber Corp., 77 S.C. 81, 81, 57 S.E. 670, 671 (1907). The BZA process cannot preserve the central right at issue: access to judicial review before construction forecloses meaningful relief.

In short, equity does not reward Respondents' choice to segment and obscure this project with a free pass from judicial review or immunity from injunctive relief. *See Smith v. Todd*, 155 S.C. 323, 152 S.E.2d 506 (1930) ("[N]o person shall be allowed to reap the benefit of his own wrong.").

V. No Injunction Bond is Required.

Respondents' demand for a $200 million bond lacks legal support. Rule 245 governs an extraordinary writ issued under the South Carolina Constitution and Section 14-3-310. Neither source imposes a bond requirement. S.C. Const. art. V, § 5; S.C. Code Ann. § 14-3-310.

Valara attempts to graft the language of Rule 65, SCRCP, onto an extraordinary writ. It does so without support. Valara's only case, *State v. Patterson*, 96 S.C. 29, 79 S.E. 522 (1913), is wholly inapposite. The bond there was "required under the statute" at issue in the case, *id.* at 29, 79 S.E. at 522, not under the rules for an extraordinary writ. Here, neither the Planning Enabling Act nor Section 14-3-310 provide for a bond. The Respondents ask the court to invent a bond requirement out of thin air, and the Court should decline that invitation.

Moreover, Valara's bond demand would place equitable relief beyond the reach of virtually every South Carolinian and reward deceptive behavior, underscoring the public importance of this case. Respondents have chosen to obscure the nature of this project from the public while Valara rapidly builds this major land development without the Major permit and public process that are clearly required by law. *Supra* pp. 18–20. Valara cannot use its rush to build without following the law to justify an insurmountable bond. *See Crawford v. Atl. Coast Lumber Corp.*, 89 S.C. 456, 71 S.E.2d 1049, 1050 (1911) ("It is obvious that a defendant can suffer no damages from being enjoined from violating the rights of another."); *Richland/Wilkin*

Joint Power Auth. v. U.S. Army Corps of Eng'rs, 826 F.3d 1030, 1043 (8th Cir. 2016) (taking into consideration "the defendants' apparent prejudgment to proceed prematurely with the Project" without following the proper legal process in waiving bond requirements (internal citation omitted)); *see also Ark. Best Corp. v. Carolina Freight Corp.*, 60 F. Supp. 2d 517, 521 (W.D.N.C. 1999) ("Circumstances in the instant case warrant the posting of only a nominal bond in that Plaintiffs have shown a strong likelihood of success on the merits.").[13]

CONCLUSION

For the reasons noted above, Petitioner respectfully requests that the Court grant its Petition for an extraordinary writ and enjoin, pending appeal, further unlawful construction, development, processing, and/or approval of the Valara data center and power plant without the Major Land Development Permit and public process required by the County's Ordinance.

Respectfully submitted,

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[13] If the Court were to impose a bond, it should be a nominal one. Both State Rule 65, and the Federal Rule upon which it is based, give courts broad discretion to set a bond at an amount the court deems "proper." Rule 65(c) & Note, SCRCP. Courts "retain[] the discretion to set the bond amount as it sees fit or waive the security requirement," *Pashby v. Delia*, 709 F.3d 307, 331–32 (4th Cir. 2013), *abrogated on other grounds as recognized by Stinnie v. Holcomb*, 37 F.4th 977 (4th Cir. 2022), and in appropriate cases, "a nominal bond may suffice." *Hoechst Diafoil Co. v. Nan Ya Plastics Corp.*, 174 F.3d 411, 421 (4th Cir. 1999). Federal courts, including in South Carolina, routinely set a nominal bond in cases where a hefty bond would effectively foreclose access to the courts in public interest litigation. *E.g.*, *Middleton v. Andino*, 488 F.Supp. 3d 261, 304 (D.S.C. 2020) (collecting cases); *Defs. of Wildlife v. U.S. Fish & Wildlife Serv.*, 539 F. Supp. 3d 543, 560 (D.S.C. 2021) (same). Although South Carolina courts have not yet addressed the bond requirement in public interest cases, where—as here—the relevant State rule is "substantially the federal rule," Rule 65 Note, SCRCP, this Court "may consider federal cases in interpreting the rule." *State v. Murdaugh*, 448 S.C. 1, 25–26, 931 S.E.2d 294, 307 (2026).

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