

STATE OF NORTH CAROLINA
COUNTY OF CHATHAM

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 26CV000456-180

ECO TIP WEST LLC,

Plaintiff,

v.

CHATHAM COUNTY, NORTH CAROLINA,

Defendant.

**CHATHAM COUNTY'S
RESPONSE IN OPPOSITION TO
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT**

NOW COMES Defendant Chatham County, North Carolina (hereinafter "County"), by and through the undersigned counsel, and submits this Response in Opposition to Plaintiff's Motion for Summary Judgment:

INTRODUCTION

Plaintiff's motion for summary judgment presents a straightforward question: does Plaintiff have a legal right to proceed with its proposed data center despite the County's moratorium? The answer is no. The moratorium was validly adopted and is not an unlawful down-zoning. Plaintiff has no vested right to construct a data center, having never obtained a development approval authorizing that use. Plaintiff cannot establish that the moratorium was adopted in bad faith or deprives it of all economic value so as to violate the "Law of the Land" Clause. Plaintiff is not entitled to permit choice, having neither submitted a complete application before the moratorium's effective date nor exhausted its administrative remedy for the County's inaction. And in any event, discovery remains necessary to test whether Plaintiff's claimed expenditures were made in good-faith reliance on any qualifying approval, making summary judgment premature under Rule 56(f).

STATEMENT OF FACTS

This action arises from the County’s lawful adoption of a twelve-month moratorium on data center development pursuant to N.C. Gen. Stat. § 160D-107. The moratorium was enacted to allow the County to evaluate the impacts large-scale data centers could have on County infrastructure, utilities, land use, and the public welfare following significant public concern on data centers and cryptocurrency mining operations. Amend. Comp. (hereinafter “Comp.”) Exs. H, I, & J.¹ On the exact day the moratorium went into effect (February 11, 2026), Plaintiff submitted an incomplete application for a data center, which was not accepted by the County. Plummer Aff. ¶¶ 13, 18.

Plaintiff’s 2025 Interpretation Letter. Four months previously, Plaintiff requested a zoning verification letter from the County. *Id.* at ¶ 6; Comp. Ex. C. The County Zoning Administrator issued a Zoning Interpretation Letter on October 29, 2025, which was amended by the Planning Director on October 30, 2025, (“Zoning Interpretation Letter”). Plummer Aff. ¶ 4; Comp. Exs. C & D. The Zoning Interpretation Letter confirmed data centers were a permitted use in the Heavy Industrial District but did not confer any right to construct one without further approval. *Id.* In fact, to obtain the Zoning Interpretation Letter, Plaintiff only submitted an inquiry and \$100 fee, no site plan was provided at the time. *Id.*

Zoning Permit Requirements. A zoning interpretation letter was *not* required for development and did not authorize any development activity. Plummer Aff. ¶ 7. Rather, a certificate of zoning compliance (i.e. a zoning permit) from the County Zoning Administrator is required for permitted uses in the Heavy Industrial District. *See* Chatham County Zoning

¹ Letter-labeled exhibits reference exhibits contained in Plaintiff’s Verified, Amended Complaint. Numeric-labeled exhibits reference exhibits submitted by the County in response to Plaintiff’s Motion for Summary Judgment along with corresponding affidavits from Angela Plummer, Hunter Glenn, and Jenifer Johnson.

Ordinance (hereinafter “Ordinance”), Ex. 1 at p. 43, § 10.10(A), p. 118, § 20.2; Plummer Aff. ¶ 7. To obtain a permit, the Ordinance requires a permit applicant to submit a detailed site plan covering lot geometry, building placement, use, parking, and whatever else the administrator deems necessary to ensure compliance with the Ordinance. Ex. 1 at 118-19, § 20.2; Plummer Aff. ¶ 8.

Appearance Commission Approval. The Ordinance also requires non-residential applicants to comply with specific landscaping, buffering, and parking requirements, incorporating the *Chatham County Design Guidelines* (“Guidelines”), into their plan, which is to be reviewed and approved by the Chatham County Appearance Commission. Chatham County Code of Ordinances § 31.04, Ex. 9; *see also* Ex. 1 at §§ 12, 14.2, 15 (incorporating the Guidelines); Plummer Aff. ¶¶ 9-11.

Permit Fee. Additionally, a Commercial Zoning Compliance permit costs \$500, whereas a Zoning Interpretation Letter only costs \$100. *See* Ex. 2, Chatham County Planning Department Administrative Fees, Eff. July 2025; Plummer Aff. ¶ 12.

Plaintiff’s 2023 General Site Preparation. Plaintiff’s alleged \$11 million in site-preparation expenditures (for general land clearing, grading, demolition, utility extensions, roadway improvements, stormwater facilities, and similar site infrastructure) were incurred in 2022 and 2023, at least three years before the County’s Zoning Interpretation Letter and at least two years before Plaintiff sought any use-specific approval. Comp. Ex. O; Ex. 4, p. 2 (TIP West Pre-Application meeting transcript).

Those expenditures thus could not have been made in reliance on a zoning permit, development approval, or other County authorization for a data center, and the County never issued Plaintiff a zoning permit or other developmental approval authorizing construction of the proposed data center. Plummer Aff. ¶ 18. It issued only the Zoning Interpretation Letter, confirming that a

data center was a permitted use of the property, Comp. Ex. D; Plummer Aff. ¶ 4, but such a letter is not a development approval capable of creating vested rights. N.C. Gen. Stat. §§ 160D-102(13), 143-755(e)(2); *MLC Auto., LLC v. Town of Southern Pines*, 207 N.C. App. 555, 561, 702 S.E.2d 68, 73 (2010).

Plaintiff's Incomplete Permit Application. Plaintiff's own conduct confirmed that it understood the Interpretation Letter was not a final development approval. On the same day the moratorium was enacted, Plaintiff submitted an incomplete application for a zoning permit and attended a preapplication meeting with County Planning Staff. Exs. 3-4; Plummer Aff. ¶¶ 13-14.

On the day of its application submission, Plaintiff had not received plan approval from the Chatham County Appearance Commission nor remitted the \$500 fee for the permit. Plummer Aff. ¶ 17; *see also* Ex. 4. To date, Plaintiff's incomplete application has not been accepted or processed by the County, more than the fifteen-day time limit to appeal said submission of the permit application, and Plaintiff has not appealed the County's alleged inaction on the zoning permit application. *See* Ex. 1, p. 119, § 20.2(B); Plummer Aff. ¶¶ 18-20.

The County's Moratorium. After holding a public hearing and learning from many Chatham County residents about their concerns about data centers and cryptocurrency mining operations in the area, the Chatham County Board of Commissioners adopted a temporary moratorium on data centers, data processing facilities, and like uses. Comp. Ex. J; Glenn Aff. ¶ 5; Johnson Aff. Ex. 10. The County adopted the moratorium following a duly noticed public hearing² and express findings in compliance with N.C. Gen. Stat. § 160D-107(d). Glenn Aff. ¶¶ 7-8. At the

² N.C. Gen. Stat. § 160D-107(b) requires the County to "publish a notice of the hearing in a newspaper having general circulation in the area not less than seven days before the date set for the hearing." N.C. Gen. Stat. § 160D-601(a) requires the County to give notice "once a week for two successive calendar weeks in a newspaper having general circulation in the area. The notice shall be published the first time not less than 10 days nor more than 25 days before the date scheduled for the hearing." The hearing was held on February 11, 2026, and the County published notice of the hearing on January 29, 2026, and February 5, 2026, satisfying both the notice requirements under Chapter 160D. *See* Ex. 6, attached hereto.

public, legislative hearing, citizens voiced serious concerns regarding data centers generally and their extraordinary electricity demand, significant water consumption, environmental impacts, constant noise, long-term strain on public infrastructure and utilities, land-use compatibility, and the broader effects of large-scale cryptocurrency mining on the community. *See* Ex. 5; Glenn Aff. ¶ 9; Johnson Aff. Ex. 11.

Faced with these concerns, the County determined that additional time was necessary to evaluate the impacts of large-scale data center development and to develop appropriate standards before allowing such projects to proceed. *See* Comp. Ex. H; Glenn Aff. ¶ 10. In response, the County exercised its authority expressly granted by N.C. Gen. Stat. § 160D-107 to adopt a temporary twelve-month moratorium, providing the time necessary to study the impacts of this emerging land use, evaluate appropriate regulatory standards, and fulfill its obligation to protect the health, safety, and welfare of Chatham County residents. Comp. Ex. J; Glenn Aff. ¶¶ 9-11.

Without a valid zoning permit or a complete application, Plaintiff now seeks to invalidate the County's moratorium, or at the very least, have this Court determine the moratorium does not apply to it. Plaintiff initiated this Action on April 30, 2026, filed an Amended Complaint on May 12, 2026, and has now moved for summary judgment (a mere three months later without the benefit of full discovery). Plaintiff's motion should be denied.

ARGUMENT

This case presents five independent grounds requiring denial of Plaintiff's motion and entry of judgment for the County.

First, the County validly adopted the moratorium pursuant to N.C. Gen. Stat. § 160D-107, and the moratorium is not an unlawful down-zoning under § 160D-601(d), as it neither amended the County's zoning regulations nor changed Plaintiff's zoning classification.

Second, Plaintiff cannot establish a vested right to construct a data center because neither the Zoning Interpretation Letter, its preliminary site-development permits, nor N.C. Gen. Stat. § 160D-1403.1 can substitute for the use-specific development approval that vesting requires.

Third, Plaintiff cannot establish a violation of the “Law of the Land” Clause, N.C. Const. art. I, § 19, because the moratorium is neither arbitrary nor unreasonable in relation to a legitimate governmental purpose and does not effect a taking of Plaintiff’s property.

Fourth, Plaintiff is not entitled to permit choice once the moratorium ends because it failed to submit a complete zoning permit application prior to the moratorium’s effective date, as § 160D-107(c) requires, and Plaintiff’s failure to appeal the County’s inaction on that application, despite the administrative remedy available under the County’s Zoning Ordinance and Chapter 160D, deprives this Court of subject matter jurisdiction over any claim premised on that inaction.

Finally, to the extent Plaintiff’s vested-rights and exemption theories turn on its alleged \$11 million in expenditures, those claims cannot be resolved on the present record because the County has not yet had a meaningful opportunity to conduct discovery into the nature, timing, purpose, and claimed reliance underlying those expenditures. Accordingly, the Court should deny Plaintiff’s motion, enter judgment for the County on the claims that fail as a matter of law, and, where factual development remains necessary, deny Plaintiff’s motion for summary judgment.

I. The County’s Moratorium is Valid.

The County adhered to all the statutory requirements to pass a valid moratorium ordinance under N.C. Gen. Stat. § 160D-107, and because Plaintiff cannot prove any exemption, it is subject to the moratorium. On a judicial challenge of a moratorium, the County has the burden of showing compliance with the procedural requirements of the statute. N.C. Gen. Stat. § 160D-107(f). The Plaintiff, however, bears the burden of proving it is exempt from the moratorium or that the

moratorium ordinance was otherwise invalid. *See Currituck County v. Willey*, 46 N.C. App. 835, 836, 266 S.E.2d 52, 53 (1980) (“A municipal ordinance is presumed to be valid, and the burden is upon the complaining party to show its invalidity or inapplicability.”)

A. The Moratorium Was Validly Adopted Under N.C. Gen. Stat. § 160D-107.

North Carolina law expressly authorizes local governments to adopt temporary moratoria on development approvals (for non-residential uses) when necessary to address identified land use conditions. N.C. Gen. Stat. § 160D-107. The statute permits a moratorium on development approval for a reasonable time if notice and hearing requirements are met. N.C. Gen. Stat. § 160D-107. The regulation establishing the moratorium requires findings identifying the conditions prompting the moratorium, identifying which development approvals are subject to the moratorium, length of the moratorium, and what actions will be done to remedy such conditions. *Id.*; *Sandy Mush Props., Inc. v. Rutherford Cty.*, 164 N.C. App. 162 (2004) (120-day moratorium preventing issuance of a building permit for a proposed quarry while the county considered new land-use regulations).

Here, the County satisfied each statutory requirement. The moratorium was for a limited time, twelve-months, and was adopted following public notice, *see* Ex. 6, a public hearing, *see* Ex. 5 and Comp. Ex. H, and contained findings addressing concerns associated with large-scale data center development, including impacts on infrastructure, utilities, land use compatibility, and the public welfare. Comp. ¶¶ 59, 89; *see also* Comp. Exs. H, I, & J.

The County’s resultant moratorium ordinance, Comp. Ex. J, expressly satisfied all four statements required by N.C. Gen. Stat. § 160D-107(d):

1. Moratorium Concerns. N.C. Gen. Stat. § 160D-107(d)(1) requires a local government to explain the problem, alternatives that were considered, and why they were

inadequate compared to a moratorium. Here, the County’s concerns regarding data center development constitute legitimate land use considerations within its zoning authority and were expressly stated within its moratorium ordinance. At the February 11, 2026 legislative hearing, County staff identified concerns regarding significant electricity demand, water usage, infrastructure capacity, noise, and uncertainty surrounding cryptocurrency mining and similar high-impact uses. Comp. Exs. H, I; *see also* Minutes from Feb. 11, 2026, Meeting, attached hereto as Exhibit 5.

These concerns provided a legitimate basis for temporary regulatory action while the County evaluated appropriate standards for future development, which were expressly incorporated into the County’s moratorium ordinance. Comp. Ex. J, § 2(1). Specifically, the ordinance says the “Planning Department is in the process of developing zoning standards and mitigation methods for these intensive land use types which may cause detrimental harm to the natural environment and the quality of life of County residents.” *Id.* It goes on to specifically state that the County considered alternatives to a moratorium but could not find any. *Id.* Thus, statement one is satisfied.

2. *Moratorium’s Application.* N.C. Gen. Stat. § 160D-107(d)(2) requires the moratorium ordinances to state which approvals are paused and how that helps solve the problem. Here, the County’s moratorium ordinance expressly applied to “use of property . . . for data centers, data processing facilities, cryptocurrency mining, and any other uses associated with data processing facilities for a period of (12) months[.]” Comp. Ex. J, § 2(2). Likewise, the moratorium ordinance specifically states it shall apply to “[a]ll development approvals for data centers, data processing facilities, cryptocurrency mining operations, and any uses associated with data processing facilities[.]” *Id.* The ordinance also makes clear that “data processing, hosting, and

related services” is an undefined use, and time was needed to develop appropriate definitions and regulations that meet industry practices. *Id.* Likewise, the time would allow the County to specifically define “cryptocurrency mining” as a separate land use given the anticipated intensity of said use. *Id.* Thus, statement two is satisfied as the ordinance states what approvals the moratorium applies to and how the application of the moratorium addresses the concerns that necessitate it

3. *Moratorium’s Time Period.* N.C. Gen. Stat. § 160D-107(d)(3) requires a local government to give a termination date and explain why that time frame is reasonable. Here, the County’s moratorium ordinance was reasonable because it imposed a defined, temporary suspension while the County evaluated potential regulatory amendments for a new and emerging land use. Comp. Ex. J, § 2(3). Per the ordinance, the limited duration provided the County with sufficient time to conduct further research, assess the unique impacts associated with large-scale data center development, and consider appropriate standards, rather than imposing an indefinite restriction on development. *Id.* Thus, statement three is satisfied.

4. *Moratorium’s Action Plan.* N.C. Gen. Stat. § 160D-107(d)(4) requires a local government to list the steps and schedule it will follow to ensure the regulatory framework is adequate to address the stated concerns. Here, the County’s ordinance specifically outlines that staff will study the impacts of data centers and how other communities are handling such uses within the first four months of the moratorium. Comp. Ex. J, § 2(4). After that time, staff will develop land use regulations required to mitigate the negative impacts associated with data centers. *Id.* Then, the County will engage in the legislative process to adopt said text amendments within the County’s Zoning Ordinance, including engagement with the public during each part of the process. *Id.* Thus, statement four is satisfied.

B. A Moratorium is Not a Down-Zoning Under N.C. Gen. Stat. § 160D-601(d).

Plaintiff's claim that the moratorium constitutes an unlawful "down-zoning" misapplies N.C. Gen. Stat. § 160D-601(d). Comp. ¶¶ 139-44. That statute expressly governs *amendments* to "zoning regulations or a zoning map," that is, legislative actions that actually alter the applicable zoning scheme/regulations by changing permitted uses, development standards, or district classifications. N.C. Gen. Stat. § 160D-601(d). A temporary moratorium adopted pursuant to N.C. Gen. Stat. § 160D-107 is a separate and specific statutory authorization allowing a local government to temporarily suspend development approvals while it studies potential regulatory changes.³

The General Assembly enacted both statutes (N.C. Gen. Stat. §§ 160D-107, -601), and they must be read together. Under well-established principles of statutory construction, statutes addressing the same subject must be harmonized whenever possible, and one statutory provision should not be interpreted in a manner that renders another provision meaningless. See, e.g., *Ashe Cnty v. Ashe Cnty. Plan. Bd. & Appalachian Materials, LLC*, 387 N.C. 159, 183, 913 S.E.2d 212, 229 (2025) ("[c]onstruing the relevant Permit Choice and moratoria provisions *in pari materia*, considering the overall local government development permitting scheme, and consistent with the statutes' purposes and relevant canons of construction"). Reading § 160D-601(d) to prohibit any moratorium adopted while a local government considers potential future zoning amendments would effectively nullify § 160D-107, because virtually any moratorium intended to allow time for regulatory study could then be characterized as an unlawful down-zoning. That interpretation cannot be reconciled with the General Assembly's express authorization for such moratoria.

³ "Given the time needed to complete the procedures required for adoption or amendment of development regulations or even to rezone property, local governments sometimes adopt moratorium on development to preserve the status quo while plans are made[.]" DAVID W. OWENS, LAND USE LAW IN NORTH CAROLINA 101 (3d ed. 2020).

Moreover, the moratorium itself did not amend the County's zoning regulations or zoning map. It did not remove data processing/hosting facilities as a permitted use in the Heavy Industrial District, alter any zoning classification, or impose permanent development restrictions. Any future amendment to the zoning ordinance would be a separate legislative action subject to its own statutory requirements. Plaintiff's allegations are therefore premised not on an actual down-zoning, but on unripe, speculative concerns regarding what the County may adopt in the future. Because no such amendment has occurred, Plaintiff cannot establish a present violation of § 160D-601(d). The alleged harm arises, if at all, from a potential future regulation not from the temporary moratorium itself.

II. Plaintiff Does Not Have Vested Rights in the Construction of a Data Center, and is Therefore Subject to the Moratorium.

Plaintiff's vested-rights claims fail as a matter of law for three independent reasons. First, the County's Zoning Interpretation Letter was not a "prior valid development approval" capable of creating vested rights, as it merely construed existing zoning regulations without authorizing construction of Plaintiff's proposed data center. Second, Plaintiff's preliminary site-work permits for demolition, grading, stormwater, utilities, and similar preparatory activities cannot substitute for a project-specific approval of the data center use itself. Third, Plaintiff cannot invoke N.C. Gen. Stat. § 160D-1403.1 to establish a vested right that § 160D-108 does not otherwise confer, since no development permit for the data center was ever issued. Each defect is independently dispositive, and together they establish that Plaintiff's vested-rights claims should not survive summary judgment.

A. The County's Zoning Interpretation Was Not a "Prior Valid Development Approval" Under Chapter 160D or North Carolina's Vested-Rights Doctrine.

Separate from the factual disputes regarding Plaintiff's expenditures, Plaintiff's vested rights claims fail as a matter of law because the Zoning Interpretation Letter was not a "prior valid development approval" capable of creating vested rights. A common-law vested right requires (1) substantial expenditures or obligations, (2) good-faith reliance on a valid governmental approval authorizing the specific development, and (3) resulting detriment from a later regulatory change. *Browning-Ferris Indus. v. Guilford County Bd. of Adjust.*, 126 N.C. App. 168, 169, 484 S.E.2d 411, 413 (1997). Reliance on general zoning classifications, informal statements, or interpretations of existing regulations is insufficient absent a project-specific approval authorizing the proposed use. *Id.*; *MLC Auto., LLC*, 207 N.C. App. at 561, 702 S.E.2d at 73.

Chapter 160D similarly defines a "development approval" as a written approval required before "commencing development or undertaking a *specific* activity, project, or development proposal". N.C. Gen. Stat. § 160D-102(13) (emphasis added); *see also* N.C. Gen. Stat. §143-755(e)(2). A zoning interpretation letter merely explains how existing use regulations apply to land; it does not authorize construction or confer approval to proceed with development. Rather, the County's Zoning Ordinance requires a certificate of zoning compliance before development can commence. Ex. 1 at p. 118, § 20.2

Here, Plaintiff received only the County's Zoning Interpretation Letter, Comp. Exs. D & E, not a certificate of zoning compliance, site plan approval, or other development approval authorizing construction of a proposed data center. On its face, the Zoning Interpretation Letter unequivocally stated that it is an interpretation of the zoning ordinance and did not authorize construction or bypassing the normal permitting requirements and process. The fact that Plaintiff submitted an incomplete zoning permit application on the same day the moratorium was adopted

further demonstrates that Plaintiff understood the Zoning Interpretation Letter did not itself authorize development. *See* Ex. 4 at p. 5.

North Carolina precedent forecloses Plaintiff's theory that the Letter constituted a valid development approval. In *MLC Auto.*, the plaintiff relied on written assurances from planning officials and spent more than \$500,000 preparing its property, but no vested right existed because no official had approved the specific project. 207 N.C. App. at 567, 702 S.E.2d at 77 (“[E]xpenditures in reliance on letters such as these are not sufficient to give rise to a vested right.”). Likewise, in *Browning-Ferris*, substantial expenditures and preliminary approvals were insufficient where the plaintiff lacked final approval authorizing construction. 126 N.C. App. at 172, 484 S.E.2d at 415. The same principle applies here. A zoning interpretation, without a project-specific development approval, cannot create a vested right claim. Accordingly, Plaintiff's vested-rights claim fails as a matter of law. Likewise, without a proper development approval, then Plaintiff's proposed data center is subject to the moratorium under N.C. Gen. Stat. § 160D-107(c).

B. Plaintiff Cannot Rely on Preliminary, Non-Use Specific Permits to Establish Vested Rights in a Data Center.

Plaintiff's preliminary permits do not vest a right to develop a data center. Where multiple permits precede a building permit, a party may vest rights in the provisions governing a preliminary permit only by incurring substantial obligations in good-faith reliance on that permit (not rights in separate, unapproved aspects of the project). *Browning-Ferris Indus.*, 126 N.C. App. at 172, 484 S.E.2d at 414. Plaintiff's permits (for demolition, grading, stormwater, utilities, walls, and connections) authorized only that site work, expressly reserving the need for further approvals. *See* Summary of Preliminary Permits at pp. 26-27, *infra*. None of them approved a data center. *Id.* Plaintiff's own submitted drawings were not created until February 11, 2026, Ex. 3, and the County had no notice of a proposed data center use until an October 2025 inquiry. *See* Plummer Aff. ¶ 24.

Such preparatory work under preliminary permits does not determine the property's ultimate use. *See Thompson v. Union County*, 283 N.C. App. 547, 561, 874 S.E.2d 623, 633 (2022), reiterated in *Thompson II*, 2026 N.C. App. LEXIS 217 (2026) (unpublished).

A vested right attaches only to an approved development; none exists absent governmental approval of the proposed use itself. OWENS, LAND USE LAW IN NORTH CAROLINA 316. Vesting requires substantial expenditures made in good-faith reliance on a valid approval authorizing the development at issue, not merely permits obtained in connection with a future project. *Browning-Ferris Indus.*, 126 N.C. App. at 171, 484 S.E.2d at 414. What matters is what the government approved, not what Plaintiff intended to build. Plaintiff's theory would improperly let any preliminary site-work permit freeze zoning for an entirely different, later-proposed use never actually approved, which is a result *Browning-Ferris* does not support. Nor does N.C. Gen. Stat. § 160D-108(c) help Plaintiff, as it requires the development permit itself, which Plaintiff never obtained and cannot substitute with preliminary permits. Because no permit authorized the data center, Plaintiff cannot establish a vested right to it, and the Court should reject any effort to extend *Browning-Ferris* beyond the approvals actually issued.

C. Plaintiff Cannot Use N.C. Gen. Stat. § 160D-1403.1 to Establish Vested Rights Where No Development Permit Was Issued.

Plaintiff cannot avoid the absence of a qualifying development approval by invoking N.C. Gen. Stat. § 160D-1403.1. That statute provides a procedural vehicle for certain original actions challenging the enforceability, validity, or effect of a land-development regulation (where the regulation is alleged to be unconstitutional, ultra vires or beyond statutory authority, or a taking) but it is not an independent source of vested rights and does not eliminate the substantive requirements of § 160D-108. Section 160D-108(c) provides statutory vesting only where a development permit application has been submitted *and* a permit has been issued in accordance

with the permit-choice statute; although vesting may relate back to the date of application once the permit issues, the permit must first be issued before any statutory vested right arises. N.C. Gen. Stat. § 160D-108(c)-(d).

“Permit choice is closely related to vested rights, but they are notably different concepts . . . [o]ne applies before the permit is approved and one applies after the permit is approved.” Lovelady, n.3, *infra*; see also OWENS, LAND USE LAW IN NORTH CAROLINA 316 (“No vested right exists because there has not yet been any governmental approval of a proposed development.”). No development permit authorizing Plaintiff’s proposed data center was ever issued here, so the statutory event necessary to establish the claimed right never occurred, regardless of when Plaintiff’s application was submitted or whether it was properly deemed incomplete. *See* N.C. Gen. Stat. § 160D-107(c).

Nor does § 160D-1403.1 permit Plaintiff to bypass those substantive requirements simply by recasting its vested-rights theory as an original action. Plaintiff has not availed itself of the administrative process under § 160D-108(h) and § 19.12(G) of the County’s Zoning Ordinance, which allows a claimant to seek a vested-rights determination from the zoning administrator with appeal to the Board of Adjustment; in lieu of that process, § 108(h) permits an original civil action only under one of the three narrow exceptions in § 160D-1403.1, and Plaintiff’s claims invoke none of them. Its seeks only invalidation of the moratorium as arbitrary, capricious, and a taking. *Compare* Comp. ¶¶ 173-74 with ¶¶ 155, 163. This is consistent with the broader principle that a vested right protects development that has already received the necessary governmental approval; it does not transform a pending or incomplete application into one. Plaintiff’s reliance on the County’s Zoning Interpretation Letter does not cure this defect, as the Letter was merely an interpretation of the zoning regulations, not a development permit or approval authorizing

construction of the data center. Accordingly, the absence of an issued development permit independently defeats Plaintiff's statutory vested-rights claims, and neither the Interpretation Letter, the preliminary site-work permits, nor the pending application can substitute for the development approval required by Chapter 160D.

III. Plaintiff Cannot Establish a Violation of the "Law of the Land" Clause.

Plaintiff's Sixth Claim for Relief alleges that the County's moratorium violates the "Law of the Land" Clause of the North Carolina Constitution, N.C. Const. art. I, § 19, because it was allegedly enacted in bad faith, for an improper purpose, and as a pretext to prevent Plaintiff from developing its property. *See* Comp. §§ 173-77. The claim fails because Plaintiff cannot establish that the moratorium is arbitrary or unreasonable in relation to any legitimate governmental purpose or amounts to a regulatory taking of Plaintiff's property. *Finch v. Durham*, 325 N.C. 352, 364, 384 S.E.2d 8, 15 (1989); *see also Helms v. City of Charlotte*, 255 N.C. 647, 653, 122 S.E.2d 817, 822 (1961) ("It is a general rule that zoning cannot render private property valueless."); *see also Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency*, 535 U.S. 302 (2002) (holding a temporary moratorium on development approvals is not in and of itself an unconstitutional taking); *Tri-County Paving, Inc. v. Ashe Cnty.*, 281 F.3d 430 (4th Cir. 2002) (upholding a one-year moratorium on the building of asphalt plants as constitutional).

North Carolina's "Law of the Land" Clause does not prohibit local governments from regulating land use or temporarily suspending development while considering appropriate regulations. Rather, a land-use regulation is presumed valid, and the party challenging the regulation bears the burden of demonstrating that it is arbitrary or unreasonable and has no substantial relation to the public health, safety, morals, or general welfare. *See Huntington Props.*,

LLC v. Currituck Cnty., 153 N.C. App. 218, 223, 569 S.E.2d 695, 700 (2002); *Willey*, 46 N.C. App. at 836, 266 S.E.2d at 53.

The moratorium easily satisfies that standard. The County adopted it pursuant to the express authority granted by N.C. Gen. Stat. § 160D-107 after identifying specific land-use concerns associated with large-scale data centers, including extraordinary electricity demand, water consumption, impacts on infrastructure and utilities, environmental effects, noise, and the need to develop appropriate standards for an emerging and potentially intensive land use. *See* Comp. Ex. J, § 2. The ordinance expressly states that the County needed additional time to study these impacts, develop appropriate zoning standards and mitigation measures, and determine how data centers and related uses should be regulated. *Id.*

Those are quintessentially legitimate land-use and public-welfare considerations. Indeed, the General Assembly has expressly recognized that local governments may adopt temporary moratoria when additional time is necessary to evaluate land-use conditions and consider potential regulatory responses. N.C. Gen. Stat. § 160D-107. The County therefore was not acting outside its regulatory authority; it was exercising authority specifically conferred by the General Assembly.

Nor does the fact that the moratorium affected Plaintiff's proposed project establish a constitutional violation. A generally applicable land-use regulation does not become arbitrary merely because it has a significant effect on a particular property owner or development proposal. Rather it would have to deprive the property owner of all practical use of the property and the property would have to be rendered of no reasonable value. *Finch*, 325 N.C. at 364, 384 S.E.2d at 15. Here, the moratorium applies broadly to data centers, data processing facilities, cryptocurrency mining operations, and associated uses. Comp. Ex. J, § 2(2). It was not enacted solely to prohibit Plaintiff's particular project, nor did it rezone Plaintiff's property or permanently prohibit the

proposed use. Likewise, Plaintiff has not shown any competent evidence of a complete diminution of the property's value to begin to prove a taking claim. *Finch*, 325 N.C. at 366, 384 S.E.2d at 20 (“A taking does not occur simply because government action deprives an owner of previously available property rights.”).

IV. Plaintiff Is Not Entitled to Permit Choice When the Moratorium Ends.

Permit choice under N.C. Gen. Stat. §§ 160D-107(c), -108(b), 143-755 allows an applicant to have its project evaluated under the development regulations in effect at the time a complete application was submitted, rather than any regulations enacted afterward. Plaintiff cannot invoke permit choice for its proposed data center for three independent reasons: (A) its application was not complete when the moratorium took effect, (B) it was not submitted before the moratorium's effective date in any event, and (C) Plaintiff failed to exhaust the administrative remedy available to challenge the County's inaction, depriving this Court of subject matter jurisdiction over any claim premised on that inaction.

A. Plaintiff's Application Was Not Complete When the Moratorium Took Effect.

In the moratorium context, permit-choice protections apply only where an applicant has submitted a complete application sufficient to begin substantive review before the moratorium's effective date. N.C. Gen. Stat. § 160D-107(c); *Ashe Cty.*, 387 N.C. at 170, 913 S.E.2d at 221. In *Ashe County*, the application was deemed complete only after the applicant submitted a comprehensive 158-page package, including engineering drawings, a pending state air-quality permit, compliance representations, and the \$500 permit fee, which the county accepted and deposited. *Id.* at 162-63, 913 S.E.2d at 216. Plaintiff's application here lacked comparable hallmarks of completeness: it had not received the Appearance Commission's required approval of its site/landscaping plan, and it had not paid the \$500 permit fee, both were prerequisites to a

complete application under the County’s Ordinance. Ex. 1 at pp. 63-69, § 12.6(c); Exs. 3 & 4 at p. 5. Plaintiff’s own representatives were told these requirements applied at the pre-application meeting held only hours before filing. Ex. 4 at p. 5. Because the application was not accepted as sufficient to begin substantive compliance review, it does not qualify for the statutory protections of § 160D-107(c).

B. The Plaintiff’s Zoning Application Was Not Submitted “Prior to the Effective” Date of the Moratorium, So It Cannot Invoke Permit Choice.

Even setting completeness aside, Plaintiff still cannot establish permit choice after the moratorium ends because it did not file a complete application *prior to* the moratorium’s effective date, as required by N.C. Gen. Stat. § 160D-107(c). Section 107(c) provides that permit-choice protections under N.C. Gen. Stat. §§ 160D-108(b) and 143-755 apply only when “a complete application for a development approval has been submitted *prior to the effective date of a moratorium.*” (emphasis supplied). The County’s moratorium became effective on February 11, 2026. Plaintiff alleges that it submitted its application at 3:09 p.m. on February 11, 2026, not before that effective date. Comp. ¶ 107 & Ex. M. Accordingly, Plaintiff remains subject to the moratorium and is not entitled to permit choice. N.C. Gen. Stat. § 160D-107(c).

The statute’s plain language is dispositive. Section 160D-107(c) protects only a “complete application” submitted “prior to the effective date of a moratorium.” The County’s moratorium became effective February 11, 2026, and Plaintiff alleges that it submitted its application at 3:09 p.m. that same day. Comp. ¶ 107 & Ex. M. Thus, even apart from the application’s incompleteness, Plaintiff did not submit it “prior to” the effective date.

The General Assembly’s choice of “prior to” rather than inclusive language such as “on or before” must be given effect. See *In re B.L.H.*, 376 N.C. 118, 122, 852 S.E.2d 91, 94 (2020); *State v. McCants*, 275 N.C. App. 801, 822, 854 S.E.2d 415, 430 (2020). The Court may not expand the

statute beyond the language enacted by the General Assembly. See *State v. Sitosky*, 238 N.C. App. 558, 564-65, 767 S.E.2d 623, 627 (2014). When the legislature intends to include the stated date, it routinely employs phrases such as “on or before” or “on or after.” See, e.g., N.C. Gen. Stat. §§ 160D-804(g) (“applicable to performance guarantees issued *on or after that date*”); 160D-935(d)(5) (“send the documentation to the applicant *on or before the day* the city denies the application fee”). Accordingly, Plaintiff’s application fails to trigger permit choice protection because it was filed on, rather than before, the moratorium’s effective date.

C. Plaintiff Failed to Appeal the De Facto Denial of Its Permit Application.

Even if Plaintiff could otherwise satisfy § 160D-107(c)’s completeness and timing requirements, its permit choice claim is premised on its alleged pending application. However, that application is effectively denied due to the County’s inaction and Plaintiff’s failure to appeal said inaction. As such, Plaintiff’s claims for permit choice are independently barred because Plaintiff never exhausted the administrative remedy available to challenge that inaction.

Where an effective administrative remedy exists, it is exclusive and must be exhausted before judicial recourse, and failure to do so deprives the Court of subject matter jurisdiction. *Laurel Valley Watch, Inc. v. Mountain Enters. of Wolf Ridge, LLC*, 192 N.C. App. 391, 403, 665 S.E.2d 561, 569 (2008); *Sanford v. Williams*, 221 N.C. App. 107, 117, 727 S.E.2d 362, 368 (2012). The County’s Board of Adjustment is the body authorized to hear appeals from zoning officials’ decisions, N.C. Gen. Stat. § 160D-405, and Plaintiff could have appealed the Zoning Administrator’s inaction on processing its permit application within fifteen days under §§ 20.2(B) and 18.4 of the Ordinance. It did not. Plaintiff’s only appeal addressed the moratorium’s applicability, not the County’s inaction on the application, and no Board ruling on that issue was

ever obtained. Ex. 7. Accordingly, this Court lacks subject matter jurisdiction over Claims III through V to the extent they seek to establish a vested right based on the County's inaction.

IV. Discovery Is Necessary to Resolve Plaintiff's Vested-Rights, Exemption, and Reliance-Based Claims.

Rule 56(f) permits the Court to defer summary judgment where the nonmoving party has not had a meaningful opportunity to conduct discovery necessary to oppose the motion. N.C. Gen. Stat. § 1A-1, Rule 56(f); *Estate of Rivas v. Fred Smith Constr., Inc.*, 258 N.C. App. 13, 17 (2018). Plaintiff's moratorium exemption and vested-rights claims turn on whether it made "substantial expenditures" in "good-faith reliance on a prior valid development approval." N.C. Gen. Stat. § 160D-107(c) (emphasis added); *Browning-Ferris Indus. v. Wake County*, 905 F. Supp. 312 (E.D.N.C. 1995) (reliance, good faith, and substantiality of expenditures are the touchstones of a vested right). The amount of an expenditure alone does not establish reliance; Plaintiff must show its \$11 million in claimed costs, Comp. ¶ 166, Comp. Ex. O, were tied to a qualifying approval and to the specific development for which protection is sought. *See Simpson v. City of Charlotte*, 115 N.C. App. 51, 57, 443 S.E.2d 772, 777 (1994); OWENS, LAND USE LAW IN NORTH CAROLINA 316. The existing record raises substantial questions on that score.

Many identified expenditures predate the County's Zoning Interpretation Letter and reflect general site work (grading, demolition, roadway improvements, and utilities) rather than costs specific to the data center. Comp. Ex. O. Indeed, the last identified contractor payment occurred more than a year before the Letter issued. *Compare* Comp. Ex. D *with* Comp. Ex. O (contractor partial waiver of lien through November 30, 2023; Letter issued October 29, 2025). Expenditures predating the alleged approval cannot, as a matter of causation, establish good-faith reliance on it,

and Plaintiff has identified no expenditures made after the Letter.⁴ See *Marcus Bros. Textiles, Inc. v. Price Waterhouse*, 350 N.C. 214, 224-25, 513 S.E.2d 320, 327 (noting that justifiable reliance is a jury question). Some expenditures even reference site work for a nearby property, which needs to be explored and verified through the discovery process.

Yet, the County has had limited opportunity to obtain the project records, financial documents, contracts, communications, and testimony needed to test the nature, timing, and purpose of these expenditures, including whether they were incurred for the data center or for general industrial development independent of it, and to test Plaintiff's related allegations that the moratorium was adopted in bad faith and as pretext. See Comp. ¶¶ 42-52, 173-77. This is particularly warranted given the presumption that land-use ordinances are valid and the burden on the challenging party to prove otherwise. *Huntington Props. v. Currituck County*, 153 N.C. App. 218, 230, 589 S.E.2d 695, 704 (2002); *Currituck County v. Willey*, 46 N.C. App. 835, 836, 266 S.E.2d 52 (1980).

Unlike *Estate of Rivas*, where nearly ten months elapsed before the summary judgment hearing and the defendant had already obtained affidavits, corporate records, and deposition testimony, Defendant here has had only three months from the filing of the operative complaint to the hearing. Moreover, as of the filing of this Response, Plaintiff has not yet served its discovery responses to the County. Ferguson Aff. ¶ 3. Accordingly, even if the Court were to conclude that the Interpretation Letter qualifies as a development approval, which it is not, genuine issues of material fact remain as to whether Plaintiff's expenditures were made in good-faith reliance on

⁴ "In the case of vested rights, the developer already has a valid permit—they have relied upon an approved permit and are allowed to continue development in accordance with the approved permit even if rules are subsequently changed." Adam Lovelady, Permit Choice Rule for Development Regulations, Coates' Canons: N.C. Loc. Gov't L. Blog (Dec. 6, 2021), <https://canons.sog.unc.edu/blog/2021/12/06/permit-choice-rule-for-development-regulations/>. The Supreme Court has itself cited Lovelady's analysis in explaining the operation of the Permit Choice and moratoria statutes. See *Ashe County v. Ashe County Planning Board*, 387 N.C. 159, 171-72 (2025)

that approval, and summary judgment should be denied, or at least deferred pursuant to Rule 56(f) until the County has had a meaningful opportunity to conduct full discovery.

CONCLUSION

For the foregoing reasons, Plaintiff's Motion for Summary Judgment should be denied.

First, the County validly adopted the moratorium pursuant to N.C. Gen. Stat. § 160D-107, and the moratorium is not an unlawful down-zoning under § 160D-601(d).

Second, Plaintiff cannot establish a vested right to construct a data center, having identified no development approval authorizing that use.

Third, Plaintiff cannot establish a violation of the "Law of the Land" Clause, as the moratorium is neither arbitrary nor unreasonable in relation to a legitimate governmental purpose and does not effect a taking of Plaintiff's property.

Fourth, Plaintiff is not entitled to permit choice once the moratorium ends because it failed to submit a complete application prior to the moratorium's effective date, and its failure to exhaust the administrative remedy available to challenge the County's inaction deprives this Court of subject matter jurisdiction over any claim premised on that inaction.

Finally, to the extent Plaintiff's vested-rights and exemption theories turn on its alleged \$11 million in expenditures, those claims cannot be resolved on the present record because the County has not yet had a meaningful opportunity to conduct discovery into the nature, timing, purpose, and claimed reliance underlying those expenditures.

Accordingly, the County respectfully requests that the Court:

1. Deny Plaintiff's Motion for Summary Judgment;
2. Enter judgment for the County on the validity and applicability on its moratorium and Law of the Land claims to the extent appropriate;

3. Dismiss Claims III through V for lack of subject matter jurisdiction based on Plaintiff's failure to exhaust administrative remedies; and

4. Alternatively, deny or defer resolution of the reliance- and expenditure-based claims pursuant to Rule 56(f).

This the 27th day of August, 2026.

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**SUMMARY OF PRELIMINARY PERMITS CITED BY PLAINTIFF AS GIVING IT A
DEVELOPMENT APPROVAL FOR A DATA CENTER**

1. a January 10, 2022 Letter of Approval for WP-21-367 concerning grading associated with demolition, which states: **“In addition, local city or county ordinances or rules may also apply to this land-distributing activity;”**
2. a February 16, 2022 Land-Disturbing Permit for WP-21-367 authorizing that activity;
3. a January 9, 2023 Letter of Approval for WP-22-652 concerning grading for infrastructure, which states: **“In addition, local city or county ordinances or rules may also apply to this land-distributing activity;”**
4. a February 6, 2023 Land-Disturbing Permit for WP-22-652;
5. a March 31, 2022 Letter of Approval for WP-22-30 concerning utility infrastructure, which states: **“In addition, local city or county ordinances or rules may also apply to this land-distributing activity;”**
6. an April 18, 2022 Land-Disturbing Permit for WP-22-30;
7. a March 17, 2022 Stormwater Permit for SCM-21-16, which states:

All other required applications must be received and permits must be obtained prior to the start of the work. These may include, but are not limited to, the following: Soil Erosion and Sedimentation Control; Flood Damage Prevention; Subdivision, Building Permits and Inspections; NC Department of Transportation; NC Division of Water Quality; US Army Corps of Engineers; and NC DENR-Dam Safety.

...

Approval of this permit confers upon the property the right to develop with the type and intensity of use only as such relates to the requirements of the stormwater ordinance and in the manner as herein described and as shown on the approved site plan. **Development of the property, however, shall be subject to any and all future amendments to this ordinance which do not affect such type and intensity of use** and shall proceed in full compliance with all other applicable local, state and federal regulations.

8. a February 16, 2023 Building Permit for BP-23-429 authorizing demolition and removal of existing structures, slabs, footings, and roads, which states: **“Granting of a permit does not presume to give authority to violate or cancel the provisions of any other State and local law regulating construction or the performance of construction;”**

9. a March 22, 2023 Building Permit for BP-23-905 authorizing construction of a retaining wall/sound wall, which states: **“Granting of a permit does not presume to give authority to violate or cancel the provisions of any other State and local law regulating construction or the performance of construction;”**
10. a February 3, 2023 Floodplain Development Permit for WP-23-9 concerning demolition, closure of existing facilities, decommissioning, and related site work, which states: **“Applicant is hereby informed that other permits may be required to fulfill local, state, and, federal regulatory requirements and acknowledges that it is their responsibility to ensure that all necessary permits are obtained;”**
11. an April 11, 2023 Sign Permit for PL-23-684;
12. a November 8, 2022 sewer-extension approval from the State of North Carolina’s Department of Environmental Quality; and
13. an August 4, 2022 approval concerning engineering plans and specifications for connection to the public water system from the State of North Carolina’s Department of Environmental Quality, which states: **“This approval does not address all applicable laws, rules, standards and criteria, and other approvals and licenses that may be required by the local, state, or federal government.”**

See Ex. 8, as referenced and incorporated into Plaintiff’s Complaint at ¶ 113, Ex. K.⁵

⁵ Plaintiff references these approvals, Comp. ¶ 113, and includes as an exhibit the cover letter from its attorney to the County Attorney, Comp. Ex. K; however, Plaintiff does not include the full documentation of the approvals referenced as an exhibit to its complaint. Therefore, the County is submitting the full documentation transmitted to the County Attorney with Exhibit K as Exhibit 8 to this Response. North Carolina courts may consider the complete versions of documents that are the subject of, and specifically referenced in, a plaintiff’s complaint, even when those documents are submitted by the defendant rather than the plaintiff. *See Holton v. Holton*, 258 N.C. App. 408, 415-19, 813 S.E.2d 649, 655 (2018). Accordingly, the Court may properly consider the full versions of the documents Plaintiff expressly referenced or incorporated into its Amended Complaint.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of **CHATHAM COUNTY'S RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT** was served by electronic filing and service through the Court's E-Filing system to the party or attorney for each party as follows:

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This the 27th day of August, 2026.

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