Southern Coalition for Social Justice

Southern Coalition for Social Justice
PO Box 51280
Durham, NC 27717
southerncoalition.org

Submitted via email

Lee County Board of Commissioners, NC
c/o Hailey Hall,
Communications Manager/Clerk to the Board
hhall@leecountync.gov

City of Sanford, NC
c/o Bonnie D. Bryant,
City Clerk
bonnie.bryant@sanfordnc.net

Town of Broadway, NC
c/o Renee Saville,
clerk@broadwaync.com

November 11, 2026

RE: Comments on the Proposed Unified Development Ordinance Re-adoption Procedure and Implications for the 2026 Data Center Text Amendment

Dear Lee County Commissioners, City of Sanford Mayor and City Councilmembers, and Town of Broadway Mayor and Commissioners,

Thank you for the opportunity to provide comments on the Lee County Commission ("Lee County"), City of Sanford ("Sanford"), and Town of Broadway's ("Broadway") collective Unified Development Ordinance ("UDO") re-adoption process and its impact on the 2026 Data Center Text Amendment.

The Southern Coalition for Social Justice ("SCSJ") submits this letter on behalf of the Blue Ridge Environmental Defense League ("BREDL"), Clean Water for North Carolina ("CWFNC"), and their respective members who live, work, and do business in Lee County. Our clients hope that your governments will embrace this opportunity to reevaluate your jurisdictions' development trajectories, lean into your unique position as a rural setting with Triangle proximity and undo recent harms to your jurisdictions' image, property values, and public trust.

If state law was not properly followed when adopting text amendments to the UDO, then prior ordinances were illegally constituted and are void, as are any building permits that were

Southern Coalition for Social Justice came together in 2007 to give Black, Brown, and low-income people better resources in the fight for justice across the South. We are lawyers, social scientists, organizers, and media professionals working to dismantle racism and oppression in the criminal legal system, in our environment, and at the ballot box.

issued under them. Pass a moratorium and give yourselves the time to get the next ordinance right. Protect your citizens, your economy, and the future of the towns and County you call home.

INTRODUCTION

It is not often in the development industry that a clear second chance comes along, opening the door for thoughtful, steadfast decision-making that can produce a significant positive impact on the lives of an entire community. For Lee County, Sanford, and Broadway, that second chance is before you all in deciding whether or not to push through approving the re-adoption of each local government's UDO, or to take time and deliberate on the process and content of your foundational governing documents.

On November 9, 2026, the Lee County Zoning Administrator admitted that Lee County has long neglected statutory requirements to adopt consistency statements for zoning decisions pursuant to N.C.G.S. §160D-605(a).[1] This failure renders all decisions still within the statute of limitations for process defects void upon challenge. The November 9, 2026, planning board agenda materials for Lee County, Sanford, and Broadway reflect a similar acknowledgement.[2] One of the zoning ordinance amendments that appears to suffer from this deficiency is the 2026 zoning text amendment adding data center uses as a matter of right in industrial use districts ("2026 Data Center Text Amendment") that all three jurisdictions passed.[3]

This absence of a consistency statement is not merely a "technicality," or *pro forma* legal requirement without practical import. Rather, the consistency statement is a substantive measure that ensures that local governments meaningfully consider how the ordinance fits into the locality's comprehensive land use planning document: how proposed changes to their UDOs might impact their jurisdiction's "…goals, policies, and programs intended to guide the present and future physical, social, and economic development of the [municipalities]…[or the] coordinated, efficient, and orderly development within the planning and development regulation jurisdiction based on an analysis of present and future needs." *See* N.C. Gen. Stat. § 160D-501(a1). In more direct terms, it is required to ensure each singular zoning determination is aligned with the larger, long-range picture that the citizens of their jurisdiction want to see.

In the case of the 2026 Data Center Text Amendment, all three jurisdictions' lack of a consistency finding means they did not evaluate whether allowing data center uses *as a matter of right* in all heavy *and* light industrial use districts is in line with their long-range planning goals and vision for their community's future. The people of the Lee County community, however, had

---

[1] Stephanie M. Sellers, *Lee County, Sanford and Broadway Planning Paper over 25 Years of Procedural Omissions*, Sandhills News (Nov. 10, 2026), https://sandhills.news/2026/11/10/lee-county-planning-boards-paper-over-25-years-of-procedural-omissions/.

[2] *See* City of Sanford Planning Board, Meeting Agenda for November 9, 2026, p. 3; *see also* Lee County Planning Board, Meeting Agenda for November 9, 2026, p. 3; *and* Town of Broadway Planning Board, Meeting Agenda for November 9, 2026, p. 3.

[3] Lee County Board Meeting Minutes, April 20, 2026, p. 9; Town of Broadway Board of Commissioners Meeting Minutes, August 24, 2026, p. 1; City of Sanford City Council Meeting Minutes, April 21, 2026, p. 11.

that long-range vision precisely in mind when they opposed the proposed amendments, noting the lack of expertise and deliberation in its development and failure to include protections for their communities, property values, lifestyles, and business interests. Unfortunately, this long-term failure is not something that can be fixed overnight or through a quick UDO re-adoption process. What is required now is steadfast, clear-eyed leadership in a challenging moment. With that vision and leadership, this is an opportunity.

There are certain realities underlying both the challenges and opportunities of this moment. First, the 2026 Data Center Text Amendment is void, and a blanket readoption is not curative. Second, the data center amendment is not consistent with the SanLee Comprehensive Plan ("Plan SanLee"), and not reasonable or in the public interest. Fortunately, because the data center amendment was never properly adopted, it is void, and prohibitions against downzoning do not apply. Finally, the absence of a legitimately adopted data center ordinance leaves your jurisdictions and people exposed, and you must address this gap with a moratorium to provide you with time to develop a duly enacted data center ordinance that protects your constituents and is in line with the Plan SanLee.

RELEVANT ISSUES

I. The 2026 Data Center Amendment that was Adopted is Void.

North Carolina has longstanding precedent that "[z]oning ordinances not adopted in accordance with enabling statutes are invalid" or *void ab initio*.[4] This includes statutory requirement for local governments to enact consistency statements along with both map and text amendments.[5] In other words, if a local government enacts a zoning amendment that fails to comply with state statutes or local ordinances, it is void from the start,[6] "as if it had never been enacted, and the preexisting zoning remains in effect."[7]

This requirement originates from N.C.G.S. §160D-605(a) which states, in relevant part, that, "[w]hen adopting or rejecting any zoning text or map amendment, the governing board shall

---

[4] *See Thrash Ltd. P'ship v. Cty. of Buncombe*, 195 N.C. App. 727, 733, 673 S.E.2d 689, 693 (2009) (citing *Kass v. Hedgpeth,* 226 N.C. 405, 407, 38 S.E.2d 164, 165 (1946)); *see also Frizzelle v. Harnett Cty.*, 106 N.C. App. 234, 238-39, 416 S.E.2d 421, 423 (1992).

[5] *Wally v. City of Kannapolis*, 365 N.C. 449, 454, 722 S.E.2d 481, 484 (2012)(where the North Carolina Supreme Count found a "…zoning amendment at issue is invalid because defendant failed to properly approve a statement under N.C.G.S. § 160A-383."); *see also Atkinson v. City of Charlotte*, 235 N.C. App. 1, 6, 760 S.E.2d 395, 398 (2014) (where the North Carolina Court of Appeals found the City of Charlotte's "consistency statement" was deficient and declared the text amendment void.); and *Morgan v. Nash Cty.*, 224 N.C. App. 60, 69, 735 S.E.2d 615, 622 (2012)(where the North Carolina Court of Appeals found that it "sufficient—if not necessary—for a governing board to adopt the statement that is required by N.C. Gen. Stat. § 153A-341 contemporaneously with the adoption or rejection of the zoning amendment.").

[6] *Keiger v. Winston-Salem Bd. Of Adjustment*, 281 N.C. 715, 721, 190 Se.E.2d 175, 179 (1972).

[7] David W. Owens. *Land Use Law in North Carolina*, 4th ed., p. 162 (UNC-School of Government 2023)(citing *Keiger,* 281 N.C. 715.).

approve a brief statement describing whether its action is consistent or inconsistent with an adopted comprehensive or land-use plan..."[8]

Additionally, Section 3.3 of the UDO, "Zoning Map and Text Amendments," requires that all text amendments to the UDO: "shall include a statement that addresses: (a) the consistency/inconsistency of the petition with the Sanford/Lee County 2020 Land Use Plan, (b) why the Board considers the petition to be reasonable/unreasonable, and (c) why the Board considers the petition to be in the public interest/not in the public interest." Without this analysis, the rezoning process is deficient both legally, and substantively as a governance tool.

As noted above, all three jurisdictions have now admitted their failure to provide a consistency statement and UDO required statements for rezoning amendments. [9] SCSJ submitted a public records request to Lee County, NC, attached as Exhibit A, on September 21, 2026, specifically requesting a copy of the above-mentioned required statements for the 2026 Data Center Text Amendment. As of the submittal of this comment, no such statements have been provided. In light of the above admissions, it is presumed that such statements do not exist for Lee County. This conclusion is further supported by the fact that, at or after the November 9, 2026, Planning Board meeting, the Lee County Zoning Administrator stated that Lee County has not used consistency statements for text amendments "since I've been here or Amy [McNeil, Senior Planner] and she's been here 25 years."[10]

Based on all three jurisdictions moving forward with the UDO re-adoption process and the statements in their planning board meeting materials, this appears to be a systemic issue across all three jurisdictions' UDOs but has the most significant bearing on the 2026 Data Center Text Amendment. Hyperscale AI data center technology is brand new, rapidly developing, and its impacts are largely unknown. It is therefore incumbent upon local governments to be especially diligent and circumspect in authorizing these types of industrial users within their jurisdictions. Analyzing whether such uses permitted as a matter of right are consistent with the local land use plan is the bare minimum level of scrutiny necessary to come to a reasonable determination, though a more responsible analysis would involve surveying constituents, engaging external independent consultants to evaluate impacts such as noise, air pollution, and water consumption, and investigating how other local governments are addressing data centers and touring comparable hyperscale facilities to gain firsthand experience with the potential impacts to neighboring communities.

---

[8] *See* N.C. Gen. Stat. § 160D-605(a). At this time, there is only one case acknowledging Section 160D-605 and its discussion of the statute is not on-point for this matter.

[9] *See* City of Sanford Planning Board, Meeting Agenda for November 9, 2026, p. 3; *see also* Lee County Planning Board, Meeting Agenda for November 9, 2026, p. 3; *and* Town of Broadway Planning Board, Meeting Agenda for November 9, 2026, p. 3.

[10] Stephanie M. Sellers, *Lee County, Sanford and Broadway Planning Paper over 25 Years of Procedural Omissions*, Sandhills News (Nov. 10, 2026), https://sandhills.news/2026/11/10/lee-county-planning-boards-paper-over-25-years-of-procedural-omissions/.

The jurisdictions failed to include a consistency statement that renders the data center text amendment fully void *ab initio* as if it had never existed. If more protective regulations are not immediately enacted, this exposes the whole Lee County community but offers an opportunity to develop a far more robust and protective ordinance, supported by investigative reasoning and responsive to constituent concerns, provided that you enact a moratorium on data center development immediately.[11]

II. The 2026 Data Center Amendment Cannot be "Re-Adopted" as a part of the General UDO Re-Adoption Procedure as it was Never Enacted in the First Place.

As mentioned in Section I above, if not adopted with the proper statutory requirements, the 2026 Data Center Text Amendment was void from the moment it was enacted.[12] That means it cannot be "re-adopted" as proposed in the general re-adoption of the UDO. It must have its own initial adoption process and receive its own analysis and consistency statement under N.C.G.S. §160D-605. Each jurisdiction must also provide the required statements in accordance with Section 3.3 of the UDO. If these required statements are not individually adopted by each jurisdiction for the 2026 Data Center Text Amendment, it will continue to be void regardless of the current "re-adoption" process so long as the statute of limitations remains open.

For the November 9, 2026, combined planning board meeting, the Planning Boards for each of the respective jurisdictions were provided with what is a generic "Land Use Consistency Statement Readoption of Unified Development Ordinance" statements analyzing the above statutory requirements only against the general UDO, not specifically the 2026 Data Center Text Amendment.[13] At no point throughout any of the jurisdictions' proposed "Land Use Plan Consistency Statement" are data centers ever mentioned.[14] Again, if it was not adopted in accordance with state law, the 2026 Data Center Text Amendment is not a part of the UDO because it was never lawfully enacted.

If this UDO re-adoption were to be approved along with the corresponding generic consistency statement, that means that the jurisdictions still have not done an analysis on whether data centers are appropriate within Plan SanLee as required by law, let alone the additional requirements from Section 3.3 of the UDO. Which means, that the text of the 2026 Data Center Text Amendment will still be void and subject to legal challenge until the expiration of the statute of limitations in 2029. This leaves the Lee County community vulnerable to data center

---

[11] Note also that any building permits or other authorizations made pursuant to a void ordinance are also inherently void and unlawfully issued.

[12] *See Thrash Ltd. P'ship*, 195 N.C. App. 727, 733; *see also Wally*, 365 N.C. at 454; *and Atkinson*, 235 N.C. App. at 6.

[13] *See* City of Sanford Planning Board, Meeting Agenda for November 9, 2026, pp. 6-7; *see also* Lee County Planning Board, Meeting Agenda for November 9, 2026, pp. 6-7; *and* Town of Broadway Planning Board, Meeting Agenda for November 9, 2026, pp. 6-7.

[14] *Id*.

developers. The only way to redress this is through a temporary moratorium and meaningful consideration of subsequently developed standards.

III. The 2026 Data Center Text Amendment is Inconsistent with Plan SanLee, Unreasonable, and is Contrary to the Public Interest.

Clean Water for North Carolina submitted an additional comment letter that thoughtfully analyzes how the 2026 Data Center Text is not consistent with Plan SanLee. In that letter CWFNC, highlights numerous ways that the 2026 Data Center Text Amendment is inconsistent to include: (1) there is no distinction between types of data centers and their respective impacts on surrounding communities, (2) the amendment fails to assess the impacts of the heat island effect on communities neighboring data centers, (3) the amendment contains no restrictions on where data centers can be located within Light or Heavy Industrial designated areas, (4) there are no time or use restrictions on water, (5) there is no analysis of potential noise impacts on neighboring properties, and the list goes on. Please see that letter for a more in-depth analysis for this subsection. *See* CWFNC Comment Letter, *generally*.

The 2026 Data Center Text Amendment is likewise unreasonable and counter to the public interest for many of the same reasons that the amendment is inconsistent with Plan SanLee. In addition to requiring a consistency statement, Section 3.3 of the UDO requires an analysis of a text amendment's reasonableness and whether or not its in the public interest.

The adoption process for the text amendment does not appear to contain an analysis of these UDO requirements. The jurisdictions rezoned both light and heavy industrial uses to include hyperscale data centers as a matter of right without any consideration of where light and heavy industrially zoned parcels are located and how adding data centers as a use would alter the characters of those districts and the suitability of uses on adjoining properties. There is no consideration for impacts to neighboring property values, land uses, etc. Many nearby properties have sensitive receptors including schools, equestrian businesses, veterans, tourism, and agricultural operations. A data center in these neighborhoods is incompatible with the existing uses. The public opposition reflected the public's view of their own interest. Authorizing data centers must be supported by record evidence that the Board considered the public interest and carefully deliberated any costs and benefits of the amendment.

Additionally, changing area conditions make adding a large, droning hyperscale data center use *more* incompatible with the Plan SanLee, not less. Located as it is on the periphery of the rapidly expanding Triangle counties, Lee County has an opportunity to position itself not as an industrial corridor that accepts uses the more populous counties shun, but to instead be an upscale, rural respite from urban life: close enough that hybrid commuters to the Triangle can make the drive a few times a week but far enough that it maintains its rural character, where families can invest in purchasing their own little corner of the world to raise their children in and pass on to future generations with some assurance that their carefully designed homes will not end up shaded by noisy data centers or consumed up by eminent domain for pipelines to feed data centers fuel.

Finally, practical and economic conditions for data centers themselves are changing on an almost-daily basis, and any local ordinances should reflect that and require developers to employ state-of-the-art technology to minimize community impacts and disturbance of other uses and should avoid locking in antiquated standards that discourage innovation and responsible data center development.

IV. The Board and Councils Now Have an Opportunity to Develop a Meaningful and Protective Data Center Ordinance.

Your governments can look to other North Carolina jurisdictions for a better way to handle data centers. On August 4, 2026, the City of Creedmor ("Creedmor") enacted thoughtful and protective data center regulations.[15] Those regulations are attached as Exhibit B for your review and reference.

Some terms in Creedmor's regulation that Lee County, Sanford, and Broadway should consider including in their data center regulations going forward include: (1) a detailed list of submittal requirements (including a conservation plan); (2) set-back requirement of .5 mile from the boundary of home, church, school, (3) detailed requirements on lighting, (4) separate night-time and day-time noise restrictions with lower upper limit thresholds, (5) vibration restrictions, (6) restrictions on what type of cooling system can be used, (7) detailed generator restrictions, (8) performance bond for abandonment, and (9) heat island effect requirements, just to name a few. In particularly for noise, experts have recommended that dBA should be limited to more closely reflect the current ambient noise at neighboring properties and restrictions should include low frequency and tonal noise. None of these items are adequately addressed in the 2026 Data Center Text Amendment.

Lee County, Sanford, and Broadway should consider adding more protective requirements to their data center regulations so as to include similar regulations as Creedmor.

V. The Prohibition on Downzoning is Not Applicable to the 2026 Data Center Text Amendment Because it is Void and of No Effect.

Because of its procedural defects, the 2026 Data Center Amendment was void *ab initio*, meaning that it is as if it had never been enacted, and the preexisting zoning remains in effect.[16] That means recent statutorily enacted downzoning prohibitions are inapplicable, and you may impose a moratorium instead. As it would not be violate N.G.G.S. §160D-601(d)'s prohibition against downzoning for the jurisdictions to enact more protective data center regulations than those contained in the 2026 Data Center Text Amendment. There is a tremendous opportunity here to correct the deficiencies of the original 2026 Data Center Text Amendment by enacting a temporary moratorium and then developing more protective regulations.

---

[15] *See* City of Creedmor, NC Board of Commissioners Meeting Minutes, August 4, 2026, p. 3; *see also* Exhibit B.
[16] *See Thrash Ltd. P'ship*, 195 N.C. App. 727, 733; *see also Wally*, 365 N.C. at 454; *and Atkinson*, 235 N.C. App. at 6.

Even supposing that the 2026 Data Center Text Amendment had been validly enacted, § 160D-601(d) does not apply to modifying the 2026 Data Center Text Amendment. The downzoning prohibition of N.C.G.S. § 160D-601(d) is a relatively new provision of North Carolina zoning law that recently went into effect in 2024.[17] While there has been little guidance as to the application of this law, the plain language of the statute provides ample room for the jurisdictions to amend their data center regulations. The definition for downzoning only contemplates three items: (1) decrease in development density, (2) reduction in permitted uses of the land or development regulation to fewer uses than under its previous usage, and (3) creating a nonconformity not in a residential zoning district. [18] That means as long as a local governmental entity updates the text of their UDO while avoiding implicating those three provisions, then they are not violating § 160D-601(d).

For instance, if any of the jurisdictions decided they wanted to amend section 5.52.2 of their UDO entitled "noise mitigation standards" to lower the upper limit of the permitted dBA from 65 would not violate § 160D-601(d). It does not decrease the development density for the data center as the data center can still have its respective structures in locations in accordance with Section 5.52.2.1, it doesn't change the height of those same structures as noted in Section 5.52.2.7, nor does it change any of the setbacks noted in Table 5.52-1. Lowering the upper limit of the permissible dBA also does not reduce the permitted uses allowed on any property as the landowner would still be able to build any of the permitted uses for Light Industrial or Heavy Industrial on their property. Finally, it would not create a nonconforming use on the Light or Heavy Industrial property. This same logic applies to making more restrictive terms for water use in Section 5.25.6, wastewater usage and disposal in 5.52.7, and electricity use in 5.52.8.

Therefore, Lee County, Sanford, and Broadway cannot violate North Carolina General Statute Section § 160D-601(d) down-zoning by enacting more protective data center regulations than what were present in the 2026 Data Center Text Amendment because it was never a valid ordinance. And, even if the 2026 Data Center Text Amendment was properly enacted and valid, there are still ways to modify it to further protect the Lee County community.

VI. A Data Center Moratorium Should be Enacted in Order to Protect the Lee County Community and Develop Thoughtful Regulations.

Since the 2026 Data Center Text Amendment is void, it is now imperative to enact a data center moratorium because there are currently no valid data center regulations in place.[19] And if any of the jurisdictions do enact a moratorium, they won't be alone. More than 50 North Carolina

---

[17] Adam Lovelady, *Limits on "Down-Zoning"*, UNC Sch. of Gov't: Coates' Canons (Dec. 20, 2024), https ://www.sog.unc.edu/blogs/coates-canons/limits-%E2%80%9Cdown-zoning%E2%80%9D-0.

[18] N.C. Gen. Stat. § 160D-601 (emphases added).

[19] David W. Owens. *Land Use Law in North Carolina*, 4th ed., p. 162 (UNC-School of Government 2023) (referencing *Keiger,* 281 N.C. 715.).

communities have enacted data center moratoria so that they can take the time they need to figure out the best way forward.[20]

Enacting a moratorium will do exactly that, give them the time they need to develop thoughtful regulations that provide more significant protections for the greater Lee County community. N.C.G.S. § 160D-107 provides that "local governments may adopt temporary moratoria on any development approval..." for a limited time to address specific conditions that are the reason for the moratorium. A moratorium must address:

> (1) ***A statement of the problems or conditions necessitating the moratorium*** and what courses of action, alternative to a moratorium, were considered by the local government and why those alternative courses of action were not deemed adequate.
> (2) ***A statement of the development approvals subject to the moratorium*** and how a moratorium on those approvals will address the problems or conditions leading to imposition of the moratorium.
> (3) ***A date for termination of the moratorium*** and a statement setting forth why that duration is reasonably necessary to address the problems or conditions leading to imposition of the moratorium.
> (4) ***A statement of the actions, and the schedule for those actions***, proposed to be taken by the local government during the duration of the moratorium to address the problems or conditions leading to imposition of the moratorium.

N.C. Gen. Stat. § 160D-107(d).

There are particular procedural requirements that also must be followed.[21] If the proposed moratorium is for 60 days or less, "the governing board shall hold a legislative hearing and shall 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."[22] A moratorium longer than 60 days and any extension of a moratorium beyond 60 days is subject to the notice and hearing requirements of G.S. 160D-601.[23] These procedural requirements apply unless there are emergency situations for "cases of imminent and substantial threat to public health or safety."[24]

Here, the conditions necessitating a data center moratorium are clear: there are currently no data center regulations in place protecting the Lee County community and the proposed terms of the 2026 Data Center Text Amendment are inadequate, unreasonable, and contrary to the public interest. These circumstances necessitate a moratorium in order to develop thoughtful regulations

---

[20] Frank Muraca, *More than 50 North Carolina communities adopt data center moratoriums, Halifax County weighs a pause, Charlotte considers an extension*, LinkedIn: NC Data Center Newsletter (Sept. 11, 2026), https ://www.linkedin.com/pulse/more-than-50-north-carolina-communities-adopt-data-center-muraca-qzotc.
[21] N.C. Gen. Stat. § 160D-107(b).
[22] *Id*.
[23] *Id*.
[24] *Id*.

SCSJ

and protect the Lee County community. Fortunately, N.C.G.S § 160D-107 was crafted for moments such as these.

CONCLUSION

The long-term failure to consider ordinance amendments' consistency with the Plan SanLee has deprived residents of the protections afforded by statute, but nonetheless now provides an opportunity to redress the harms that would have arisen from the 2026 Data Center Text Amendment. But you must act quickly to take advantage of this opportunity and prevent greater harm. Act to establish a moratorium then engage in a reasoned, forward-looking process to develop meaningful data center regulations that consider the Plan SanLee and the required statutory factors.

Thank you for your time, your service, and your consideration of this important matter.

Sincerely,

Southern Coalition for Social Justice on behalf of Blue Ridge Environmental Defense League and Clean Water for North Carolina:



BY:_____

Cliff B. Robins
Senior Counsel, Environmental Justice
Southern Coalition for Social Justice

Enclosures:
1) Exhibit A – Submitted Public Records Request for Lee County (09.21.2026)
2) Exhibit B – City of Creedmor, NC Data Center Regulations