

IN THE CIRCUIT COURT FOR FREDERICK COUNTY, MARYLAND

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QUANTUM MARYLAND, LLC,
20251 Century Blvd., Suite 170
Germantown, Maryland, 20874

Plaintiff,

v.

JESSICA FITZWATER, *in her official
capacity as County Executive and in her
individual capacity*
Winchester Hall
12 E. Church St.
Frederick, MD 21701

Case No. C-10-CV-26-000874

and

FREDERICK COUNTY,
Winchester Hall
12 E. Church St.
Frederick, MD 21701

and

FREDERICK COUNTY PLANNING
COMMISSION,
30 N. Market St.
Frederick, MD 21701

Defendants.

* * * * *

COMPLAINT

Plaintiff Quantum Maryland, LLC (“Quantum”), by and through undersigned counsel, brings this action against Defendants Frederick County, Maryland (the “County”); Jessica Fitzwater, in her official capacity as County Executive of Frederick County and in her individual capacity; and the Frederick County Planning Commission. Quantum alleges as follows.

NATURE OF THE ACTION

1. No county executive in Maryland may suspend legislation the county council has enacted. Yet the day after the Supreme Court of Maryland rejected the last challenge to Frederick County’s land-use legislation, County Executive Jessica Fitzwater suspended that legislation by executive order, including a bill she had signed herself. She has since admitted that she did so to help her own reelection. The Council had completed that legislation in January 2026, after more than three years of public process. On June 30, 2026, the Supreme Court of Maryland held that the Frederick County Charter’s rules for making land-use decisions govern, and that not even a voter petition could sidestep them to undo what the Council had enacted. The next day, Fitzwater suspended the legislation anyway. The Frederick County Charter gives her no such power, and Maryland law forbids it. Quantum, which has invested hundreds of millions of dollars in reliance on the Council’s enactments, asks the Court to declare the order void and hold the County to its own law.

2. The land at the center of this case sat idle for decades. The former Alcoa Eastalco Works north of Adamstown was once the largest industrial site in Frederick County and employed over 600 County residents. When the smelting plant closed, the jobs and the tax revenue went with it, leaving behind hundreds of acres of empty buildings, idle transmission lines, and contaminated ground that had no viable alternative use and no party willing to invest in its redevelopment.

3. That changed in 2021, when Quantum acquired more than 2,100 acres at the Eastalco site. From the start, Quantum set out to do what the County had long hoped someone would: develop the brownfield, return the land to the tax rolls, and rebuild the kind of employment center the site had once been. Frederick County welcomed the investment without reservation. Then-County Executive Jan Gardner announced that the site “will once again serve as an employment center with high-paying jobs” and “provide a stable source of tax revenue and jobs, while having minimal impact on local services such as schools, traffic and other infrastructure.”¹ Jessica Fitzwater, then a member of the County Council, later described Eastalco as “just the sort of place where data center development should occur”² and credited Quantum with making “Frederick County an attractive frontier” for further investment.³

4. In the five years since, Quantum has spent millions revitalizing the brownfield site and invested hundreds of millions more bringing improved power, water, sewer, and fiber infrastructure to the land. It has sought and obtained approvals required by the County Code, through the ordinary process, from the Planning Commission and County staff. It has been building on the campus for years, both below ground and above it. And it has created several thousand construction jobs and contracted with dozens of local firms along the way. The campus has generated over sixty million dollars in tax revenue so far and has the potential to generate hundreds of millions more in tax revenue annually at full build out—funding schools and farmland

¹ News Flash Post, *Former Alcoa Eastalco Site Purchased*, Frederick Cnty. Gov’t (June 28, 2021), available at <https://www.frederickcountymd.gov/m/newsflash/Archive/Item/4799?arcId=7270>.

² Public Information Briefing: Critical Digital Infrastructure, Frederick Cnty. Gov’t (Sept. 19, 2024), available at https://frederick.granicus.com/MediaPlayer.php?view_id=10&clip_id=9969

³ Press Conference: Data Ctrs., Frederick Cnty. Gov’t, Off. of the Cnty. Exec. (June 22, 2023), available at https://frederick.granicus.com/MediaPlayer.php?view_id=10&clip_id=9409.

preservation. In her most recent State of the County address, Fitzwater told residents that Frederick County had a fund balance “thanks in large part to real estate taxes at the old Eastalco site.”⁴

5. Every step of the way, Quantum has played by the County’s rules, even as County Executive Jessica Fitzwater kept changing them. It has complied with the County’s laws and regulations and has offered significant community benefits that, among other things, would have funded school modernization, built recreational and green spaces, and reduced the site’s footprint. In exchange, Fitzwater has unilaterally suspended the lawful procedures governing Quantum’s development time and again, freezing Quantum’s project on the promise that the County would develop a new, comprehensive framework that would govern data centers moving forward. She called each pause temporary, and for three years Quantum took her at her word.

6. Quantum has consistently met its obligations and invested in the County, even as the rules shifted around it. Since 2022, the Council has added new limits on data centers three times, in Bills 22-05, 25-05, and 25-09, and Quantum has accepted each one. In June 2023, six months into her term as County Executive, Fitzwater paused the piecemeal rezonings on which Quantum’s development plan depended and convened a workgroup to draft comprehensive legislation, promising that she would lift the pause “after the legislative process is complete and the new regulations are in effect.”⁵ Relying on that promise, Quantum set aside the rezonings it could have pursued.

7. Two years later, as that legislation was about to go before the Council, she froze data-center applications a second time. Rather than contest her actions, Quantum worked within the process and waited for the Council to act. And when the County asked it to keep data centers

⁴ State of the Cnty. Address, Frederick Cnty. Gov’t, Off. of the Cnty. Exec. (October 27, 2025), *available at* https://frederick.granicus.com/MediaPlayer.php?view_id=10&clip_id=10457.

⁵ Public Information Briefing: Critical Digital Infrastructure, Frederick Cnty. Gov’t (Sept. 19, 2024), *available at* https://frederick.granicus.com/MediaPlayer.php?view_id=10&clip_id=9969.

away from the Adamstown community, Quantum agreed to give up the industrial zoning on roughly 107 acres of its land nearest those neighborhoods and designate them for natural resources usage (thereby stripping them of all economic value), so that the Council could instead place acreage at the far northern end of the Campus, farthest from Adamstown, in the area where its members preferred data centers be built. The County has had the benefit of that arrangement ever since, and it still does, even as Fitzwater refuses to let Quantum develop the land the Council set aside for data centers in return.

8. While Fitzwater's pauses held development in place without any legal authority, the Council did its work the way the Charter requires. Over two and a half years, the workgroup, the Planning Commission, and the Council held more than 30 public meetings and hearings on data centers, and hundreds of residents spoke or submitted comments. On May 6, 2025, Fitzwater and all seven members of the Council stood together to announce a compromise that would confine data centers to an overlay constituting less than one percent of the County's land while, in Fitzwater's words, "acknowledging that Frederick County's location makes it a logical site for this critical industry."⁶ Later that month, the Council passed Bill 25-05, which wrote many of the workgroup's recommendations into the County Code by doubling required setbacks, barring data centers from the County's protected rural areas, and imposing new limits on generators, noise, and vibration. Fitzwater signed it.

9. The overlay compromise was then introduced as Bill 25-09, taken up by the Council in four public sessions, enacted in September 2025, and signed by Fitzwater. The bill created a data-center "overlay," a defined area laid over the County's existing zoning, and made it the only place in the County where data centers may be built. The Planning Commission then held its own

⁶ News Release, Frederick Cnty. Gov't, Off. of the Cnty. Exec. (May 6, 2025), <https://www.frederickcountymd.gov/DocumentCenter/View/356132/CDI-Legislation-050625-Archived>.

hearings on the exact contours of the overlay map, and on January 20, 2026, the Council adopted the one Fitzwater's staff had drawn, amending the County's comprehensive plan through Resolution 26-01 (the "Resolution") and mapping the overlay to specific parcels through Ordinance 26-01-001 (the "Ordinance," and together with Bill 25-09 and the Resolution, the "Data Center Enactments"). The Council found that confining data-center development to the overlay would "best promote health, safety[,], order, convenience, prosperity, and general welfare." Before it acted, the Council was asked to wait for a pending State study of data-center impacts, and it declined.

10. The resulting Data Center Enactments are anything but lenient. They bar data centers from more than ninety-nine percent of the County, regulate light, sound, and vibration, expand setbacks from residential neighborhoods, and confine large-scale development to a single industrial corridor. Fitzwater praised the Data Center Enactments as a model for the State, boasting that her administration made data centers "the most regulated industry in the county."⁷

11. When opponents petitioned to put the Ordinance to a referendum, the County Attorney advised in writing that it could not lawfully be put to the voters. Yet the County took no part in defending the Ordinance in court. Quantum was left to defend the County's process and the Ordinance, at its own expense, through the Circuit Court and the Supreme Court of Maryland. The question in that litigation was whether the Frederick County Charter permits an enacted zoning ordinance to be suspended by petition. On June 30, 2026, the Supreme Court of Maryland held that it does not. The Court made clear that under the Charter, the Council decides where and how

⁷ Executive Order 04-2026 (July 1, 2026), *available at* <https://frederickcountymd.gov/ArchiveCenter/ViewFile/Item/17112>; Executive Order 05-2026 (September 14, 2026), *available at* <https://frederickcountymd.gov/ArchiveCenter/ViewFile/Item/17236>.

the County's land may be used. The next day, Fitzwater suspended the Ordinance by executive order.

12. Executive Order 04-2026, issued July 1, 2026, directed County staff to stop accepting, considering, or processing any application for a data center or its substation through the end of the year. It was Fitzwater's third moratorium on data-center development in three and a half years in office, and like the ones before it, it rested on no statute, no Charter provision, and no Council vote. Its only stated justification was the pending State study of data-center impacts, the same study the Council had declined to wait for. Her Chief of Staff had previewed Executive Order 04-2026 to Quantum's Executive Vice President on June 29, the day before the Supreme Court heard argument, explaining that Fitzwater was disappointed by the results of the June primary. Her staff acknowledged privately that the order existed "to get past the election."

13. Fitzwater did not plan to issue the moratorium in isolation. The County's own records show that she had also already decided that the Supreme Court's ruling would mark the start of a negotiation with Quantum. On the evening of the Supreme Court's ruling, Fitzwater's Chief of Staff wrote to an outside consulting firm that the County could now "move forward with negotiating a community benefit agreement with Catellus [the developer in charge of Quantum Maryland]." Exhibit A. The next day, she froze Quantum's development.

14. When Fitzwater used the unlawful moratorium to reopen community-benefit negotiations, Quantum agreed to come to the table to negotiate in good faith. The County Code assigns the negotiation of a development rights and responsibilities agreement to the County Executive. Fitzwater initiated the negotiations and met with Quantum's leadership before handing the detailed discussions to her staff. Her staff conducted those discussions at her direction and brought the terms back to her for decision. Through that process, Fitzwater approved some

provisions and rejected others. She further asked Quantum’s Executive Vice President to testify in Annapolis for higher taxes on data centers as part of the negotiation process. In the end, Fitzwater agreed to every term and took Quantum’s filing fee. Under the agreement, Quantum offered the County more than \$110 million in benefits, and on September 1, 2026, Fitzwater announced it to the press as “the largest agreement of its kind” in “the entire United States.”⁸

15. Thirteen days later, after a weekend of unfavorable polling, Fitzwater reversed course. She rejected the agreement she had negotiated and celebrated, and she refused to send it to the Planning Commission as she promised to Quantum. She then directed County staff to refuse Quantum’s administrative application, and issued a new order, Executive Order 05-2026 (the “Order” or “Executive Order”), extending the freeze to July 1, 2027, ten months past the date the State study she cited was due. That same day, she told a campaign donor that she had no choice if she wanted to win the general election. A week after that, her campaign told voters she had “never approved a single data center.”⁹ Two days after that, she explained to the Frederick News-Post that the County should stop accepting applications because “the writing is on the wall from the primary.”¹⁰

16. Fitzwater offered that statement—“I’ve never approved a single data center”—as a credential. Yet under the Frederick County Charter, the County Executive has no power to approve a data center and no power to reject one. The Council legislates; the Planning Commission and County staff apply what the Council enacts; and the County Executive’s duty is to “faithfully

⁸ Erik Anderson, *Fitzwater announces \$110M in data center benefits, reduction of planned development*, The Frederick News-Post (Sept. 1, 2026), available at <https://www.yahoo.com/news/us/articles/updated-fitzwater-announces-110m-data-231700671.html>.

⁹ Jessica Fitzwater (@JessicaFitzwaterforFrederick), Facebook (Sept. 21, 2026), available at <https://www.facebook.com/JessicaFitzwaterforFrederick/posts/please-read-below-for-my-full-statement-regarding-data-centersdear-frederick-cou/1418339563811534/>.

¹⁰ Erik Anderson, *Fitzwater pledges to reduce data center zone in second term*, The Frederick News-Post (Sept. 23, 2026), available at <https://www.yahoo.com/news/politics/articles/fitzwater-pledges-reduce-data-center-154900331.html>.

execute the laws.” Frederick Cnty., Md., Charter (“Charter”) § 402. Yet Fitzwater has assumed the role of the Council and abandoned her own. She has suspended by decree a zoning ordinance the Council enacted, she signed, and the Supreme Court of Maryland restored. She has directed staff to refuse an application the law entitles Quantum to file. None of those acts executes the law. Each one replaces it with her preference for the moment, and, by her own account, that preference follows the polls.

17. What is at stake here is larger than one project. If a County Executive may suspend an ordinance based solely on perceived political advantage, then no enactment of the Frederick County Council is secure, and no one who relies on one can be. The people of Frederick County adopted their Charter and placed the power to make and unmake law in a seven-member Council so that those decisions would be made by a vote of the Council, not by any one official. Elected officials are entitled to change their minds, but the Charter sets out how a change in policy must be made. It is for the Council to take up the question, through the process the Charter and the Land Use Article prescribe, and subject to the rights of those who relied on its enactments in the meantime.

18. What no County Executive may do is unilaterally suspend those enactments until the moment suits her. The Maryland Declaration of Rights has forbidden that since 1776, providing that “no power of suspending Laws or the execution of Laws, unless by, or derived from the Legislature, ought to be exercised, or allowed.” Md. Const. Decl. of Rts. art. 9 (originally art. VII). When the Prince George’s County Executive issued an order barring a lawful activity at county hospitals, the Court of Appeals affirmed an injunction against it, holding that the Charter gave him no authority “to refuse to observe existing laws enacted by the Council.” *Cnty. Exec. of Prince George’s Cnty. v. Doe*, 291 Md. 676, 684-86, 436 A.2d 459, 463-64 (1981). The Order

goes even further, because it overrides a decision the Council has already made. And Fitzwater told a campaign donor that she had to reject Quantum's agreement if she wanted to win the general election.

19. Quantum brings this action to restore the rule of law and to hold the County and its Executive accountable. It seeks a declaration that the Executive Order is ultra vires and void; temporary, preliminary, and permanent injunctive relief restoring its access to the County's land-use process; and compensatory damages against the County and Fitzwater, who acted with actual malice.

THE PARTIES

20. Plaintiff Quantum Maryland, LLC is a limited liability company organized under the laws of Delaware, with its principal place of business at 20251 Century Boulevard, Suite 170, Germantown, Maryland 20874. Quantum owns more than 1,558 acres north of Adamstown at the site of the former Eastalco aluminum smelter, where it is developing the only comprehensively planned data-center campus in Frederick County.

21. Defendant Frederick County, Maryland is a charter county organized under Article XI-A of the Maryland Constitution. The County acts through its Charter, its County Council, and its County Executive. The County is a "person" subject to suit under 42 U.S.C. § 1983.

22. Defendant Jessica Fitzwater is the County Executive of Frederick County and a candidate for reelection in the November 2026 general election. She issued Executive Order 05-2026 in that capacity. Quantum sues Fitzwater in her official capacity for declaratory relief, injunctive relief, and damages, as well as in her individual capacity for damages. At all relevant times, Fitzwater acted under color of State law.

23. Defendant Frederick County Planning Commission is an administrative agency of Frederick County, Maryland. The Planning Commission prepares and recommends the County's comprehensive plan and plan amendments, makes recommendations to the County Council on zoning matters, and reviews and approves subdivision plats and site plans for development in Frederick County.

JURISDICTION AND VENUE

24. Jurisdiction is proper under §§ 1-501 and 3-403 of the Courts and Judicial Proceedings Article of the Annotated Code of Maryland.

25. Venue is proper in the Circuit Court for Frederick County under § 6-201 of the Courts and Judicial Proceedings Article of the Annotated Code of Maryland because Defendants carry on a regular business and/or reside in or are employed in Frederick County.

FREDERICK COUNTY, ITS CHARTER, AND ITS SEPARATION OF POWERS

26. Frederick County's Charter, which took effect in 2014, is the organic law of the County. "In effect, it is a local constitution which forms the framework for the organization of the local government" and is "the instrument which establishes the agencies of local government and provides for the allocation of powers among them." *Cnty. Exec. of Prince George's Cnty.*, 291 Md. at 680, 436 A.2d at 462.

27. Before its Charter took effect, Frederick County operated as a commission county governed by a Board of County Commissioners.¹¹ When Frederick County adopted its Charter in 2014, the County Council acquired the power to legislate. Md. Const. art. XI-A § 3. The Charter establishes the County Council as a body with seven members, Charter § 201, and provides that

¹¹ Frederick Cnty. Council History, Frederick Cnty. Gov't, available at <https://frederickcountymd.gov/591/County-Council>.

“[a]ll the legislative powers which the County may exercise under the Maryland Constitution and laws of the State are vested in the Council,” *id.* § 202. The Charter authorizes the Council to “enact public local laws for the peace, good government, health, safety or welfare of the County,” *id.* § 301, following mandatory procedures, including introduction by written bill, publication, public hearing, enactment by vote, executive review, and a sixty-day effective date, *id.* §§ 305-307. Some of those laws are then subject to referendum. *Id.* § 308.

28. As the Supreme Court of Maryland recently recognized, the Charter also preserved the County’s longstanding zoning authority and procedures under the Land Use Article’s provisions. *In re Frederick Cnty. Data Ctr. Referendum Comm.*, 494 Md. 597, 359 A.3d 721 (June 30, 2026), *opinion filed at* 496 Md. 71, 361 A.3d 965 (July 24, 2026); *see also* Charter § 601(a) (“the provisions of the Land Use Article” that “governed land use in the County prior to the Effective Date of this Charter shall continue to apply”); Frederick Cnty., Md., Code (“Cnty. Code”) Ch. 1-19 (codifying provisions of Land Use Article). Under those provisions, the County Council enacts text amendments to the zoning code through its legislative process. *See* Cnty. Code § 1-19-3.100.1(B) (“A zoning text amendment shall be initiated as provided in the county charter for the enactment of legislation.”). The Council then implements them through ordinances following the procedures established by the Land Use Article, including Planning Commission recommendation, Council hearings, and adoption by ordinance. Md. Code, Land Use Art. §§ 3-202 to 3-204, 4-203.

29. The Charter also establishes the office of County Executive, providing that “[a]ll executive power vested in the County by the Constitution and laws of Maryland and this Charter shall be vested in the Executive.” *See* Charter §§ 401-402. The Charter requires that the County Executive “shall faithfully execute the laws” and “shall see” that “employees of the executive branch faithfully perform their duties.” *Id.* § 402.

FACTUAL ALLEGATIONS

A. Quantum's Investment in Frederick County

30. For decades, the Alcoa Eastalco Works north of Adamstown was among Frederick County's largest employers. At its peak, the aluminum smelting plant employed over 600 County residents. Alcoa ceased operations in 2005 and closed the plant permanently in 2010.¹² What remained was brownfields dotted with idle transmission infrastructure. The site sat unused for eleven years.

31. In 2021, Quantum acquired more than 2,100 acres at the Eastalco site. Quantum's plan was to remediate the brownfield site and redevelop it as a comprehensively planned campus for critical digital infrastructure (the "Campus").

32. County law at the time permitted data-center use on all land zoned general or limited industrial throughout the County. The Eastalco site was well suited to that use. It carried existing heavy-industrial zoning and sat adjacent to major transmission infrastructure and power lines that once served the plant.

33. The County welcomed Quantum's significant investment. Announcing the purchase, then-County Executive Jan Gardner stated that the site would "once again serve as an employment center with high-paying jobs" and that data centers "provide a stable source of tax revenue and jobs, while having minimal impact on local services such as schools, traffic and other infrastructure."¹³

¹² *From Smelter to Server: Eastalco's Next Chapter in Frederick County's Economic Story*, MacRo Real Estate Blog (Feb. 5, 2026), available at <https://macrocommercialrealestate.com/blog/from-smelter-to-server-eastalcos-next-chapter-in-frederick-countys-economic-story/>.

¹³ News Flash Post, *Former Alcoa Eastalco Site Purchased*, Frederick Cnty. Gov't (June 28, 2021), available at <https://www.frederickcountymd.gov/m/newsflash/Archive/Item/4799?arcId=7270>.

34. Fitzwater, then a member of the County Council, shared that view. On September 19, 2024, she described the Eastalco site as “just the sort of place where data center development should occur” because it would bring “a long vacant property back onto the tax rolls.”¹⁴ She recalled that the Council had adopted the County’s critical-digital-infrastructure ordinance “when I was on the County Council before the industry even had a foot in the door.”¹⁵ She credited Quantum’s arrival with making “Frederick County an attractive frontier for additional investments by the data center industry.”¹⁶

35. In December 2021, the Frederick County Planning Commission granted the Campus its preliminary plan and Adequate Public Facilities Ordinance approvals, which established the water, sewer, and road infrastructure improvements required to support the development.

36. Quantum then did the work no prior owner had undertaken, and it did so because the site’s industrial zoning permitted data-center use and because the County had approved the Campus. In reliance on the County’s welcome, the Planning Commission’s December 2021 approvals, and the County’s continued approvals described below, Quantum began redevelopment of the brownfield site. It constructed improvements to the power, water, sewer, and fiber infrastructure on the land, at a cost of approximately \$400 million. It excavated over 10 miles of three-foot trenches for water and sewer lines, and installed over 49 miles of conduits engineered exclusively for the specialized fiber requirements of this particular data-center campus. It also committed approximately \$150 million to long-term contracts for power capacity, equipment, and

¹⁴ Public Information Briefing: Critical Digital Infrastructure, Frederick Cnty. Gov’t (Sept. 19, 2024), *available at* https://frederick.granicus.com/MediaPlayer.php?view_id=10&clip_id=9969.

¹⁵ *Id.*

¹⁶ Press Conference: Data Ctrs., Frederick Cnty. Gov’t, Off. of the Cnty. Exec. (June 22, 2023), *available at* https://frederick.granicus.com/MediaPlayer.php?view_id=10&clip_id=9409.

construction. Quantum would not have made these expenditures and commitments without the County's approvals. Quantum would not have spent that money if County law had not allowed data centers on the site, or if the County had not approved the Campus.

37. The County continued to grant further approvals through the ordinary land-use process so that Quantum could keep developing the Campus. Quantum obtained an Amended and Restated Adequate Public Facilities Ordinance Letter of Understanding dated February 15, 2023, as amended by a Second Amended and Restated Letter of Understanding dated August 21, 2024 (together, the "APFO LOU"). The APFO LOU provides for up to 17,403,344 square feet of data-center use, 821,881 square feet of office use, and 7,500 square feet of commercial use on approximately 1,300 acres of the Campus. The Planning Commission has since approved at least 6 site plans for critical digital infrastructure facilities and associated substations under the APFO LOU. Construction on the Campus began in 2023 and has continued since.

38. The County understood the Campus as one development that Quantum would build in phases. The Data Centers Workgroup that Fitzwater later convened described the Campus as "a master planned data center community" and treated the APFO LOU as covering "the first phase of development."¹⁷ The County has also expanded the Campus's approvals once already, adding a parcel the original approvals did not cover without increasing the approved square footage. And Quantum planned to bring the rest of its land eligible for data-center development, including the Phase III Parcel described below, under the APFO LOU through later amendments. Consistent with the master plan, Quantum has structured the Campus's power supply and sewage

¹⁷ *Report of the Frederick County Data Centers Workgroup* at 2, 9, Frederick Cnty. Data Ctrs. Workgroup (Mar. 1, 2024), available at <https://frederickcountymd.gov/DocumentCenter/View/350277/Data-Center-Workgroup-Final-Report>.

infrastructure for that full build-out from the start, and the existing APFO LOU contemplates Quantum constructing a greywater facility capable of serving the entire Campus.

39. The County has already seen the return on Quantum's investment. The Campus's development has created thousands of construction jobs and engaged dozens of local firms. The Campus has generated over \$60 million in tax revenue for the County and will generate hundreds of millions of dollars of tax revenue annually at full build out. In her 2025 State of the County address, Fitzwater told residents that "private companies are investing billions of dollars here which is creating good-paying jobs and generating new tax revenue," and that "thanks in large part to real estate taxes at the old Eastalco site, we have a small fund balance in last year's budget."¹⁸

B. Quantum Accepts Two Pauses on Fitzwater's Promise That They Are Temporary

40. When Fitzwater became County Executive in December 2022, County law permitted data-center use on industrially zoned land throughout the County. A landowner could seek to rezone individual parcels to industrial use and then develop them through the ordinary site-plan process. Quantum planned to expand the Campus that way under the law then in force.

41. Six months into her term, however, Fitzwater changed the County's longstanding process. On June 12, 2023, she issued Executive Order 04-2023, pausing the County's acceptance of piecemeal rezonings and applications for data-center use. Ten days later, she convened a Data Centers Workgroup to study data centers' effects on the County and to recommend where they should go and what rules should govern them, so that the County Council could later enact comprehensive legislation.

¹⁸ State of the Cnty. Address, Frederick Cnty. Gov't, Off. of the Cnty. Exec. (October 27, 2025), *available at* https://frederick.granicus.com/MediaPlayer.php?view_id=10&clip_id=10457.

42. Fitzwater presented the pause as temporary and justified it as a matter of fairness. Pausing piecemeal rezonings, she said, would ensure that “everyone is on a level playing field” once the workgroup issued its report and while the County developed new rules.¹⁹ She committed to “lift the pause on piecemeal rezonings after the legislative process is complete and the new regulations are in effect.”²⁰

43. Quantum accepted the pause because Fitzwater had committed to lifting it once the Council enacted new regulations, and it adjusted its plans in reliance on that commitment. When she announced the pause, Quantum was prepared to seek rezoning of approximately 400 acres of its land. Nothing in the County Code allowed the County to refuse those applications, and Quantum could have filed them and challenged any refusal. It chose instead to set them aside and take part in the County’s process, *e.g.*, by participating in community discussions about the benefits of data-center development. Quantum presented to the Workgroup, and it later worked with the Council and the community on Bill 25-05, which imposed stricter standards on future data centers, including those on the Campus.²¹ Quantum also expected that the new regulations, once enacted, would confirm that the County could secure the benefits of data centers for the community while protecting public health, safety, and welfare and—as the County had long said—that the Eastalco site was the right place for large-scale data-center development.

44. The pause did not turn out to be temporary. Executive Order 04-2023 was set to expire on March 30, 2024. Before it did, Fitzwater issued Executive Order 02-2024, which

¹⁹ News Release, *County Executive Creates Data Centers Workgroup*, Frederick Cnty. Gov’t, (June 22, 2023), available at <https://www.frederickcountymd.gov/DocumentCenter/View/346083/Data-Center-Workgroup-062223-Archived?bidId=>.

²⁰ Public Information Briefing: Critical Digital Infrastructure, Frederick Cnty. Gov’t (Sept. 19, 2024), available at https://frederick.granicus.com/MediaPlayer.php?view_id=10&clip_id=9969.

²¹ *Report of the Frederick County Data Centers Workgroup at A-1*, Frederick Cnty. Data Ctrs. Workgroup (Mar. 1, 2024), available at <https://frederickcountymd.gov/DocumentCenter/View/350277/Data-Center-Workgroup-Final-Report>.

extended the pause by 184 days to September 30, 2024. Days before the new deadline, she again extended the pause by 190 days, until April 8, 2025, through Executive Order 04-2024. A pause announced in June 2023 as a stopgap while the County developed new rules thus ran for nearly twenty-two months, and Fitzwater renewed it by executive order each time it was about to end. Throughout, the pause barred Quantum from seeking the further approvals and rezonings it had set aside in reliance on her promise.

45. Throughout the pause, Fitzwater continued to promote the data center industry and the Campus. In December 2023, she told a statewide audience that the County was “trying to leverage the benefits of the data center industry while preserving Frederick County’s environment and quality of living.”²² She explained that data centers were “almost inevitably going to expand because we’re all using more data,” and that “that data has to come from somewhere.”²³ She did not suggest that the pause reflected any objection to data-center development at Eastalco.

46. Two years after the first pause, Fitzwater imposed a second. On June 11, 2025, five weeks after she and the full Council announced the compromise that became the overlay legislation described below, and six days before that legislation was introduced, she issued Executive Order 03-2025. That order directed County staff to stop accepting, considering, and processing applications for critical digital infrastructure facilities and electric substations. It explained that a hold was prudent while overlay legislation moved through the County Council and the Planning Commission. It cited as its authority only “the Charter of Frederick County, Maryland and the Laws of the State,” without identifying any provision of either, because none exists. Neither the Charter nor any State law authorizes the County Executive to suspend the acceptance or processing

²² https://www.fredericknewspost.com/news/economy_and_business/centers-of-controversy-is-there-enough-energy-for-md-to-meet-its-tech-ambitions/article_c9638a5c-17bb-59d6-bf2b-c8d61d82edae.html

²³ *Id.*

of applications the County Code permits. The Order did, however, exempt any property that had obtained an approved APFO LOU, and by its own terms it would expire on September 30, 2025.

47. The second pause, like the first, kept Quantum from moving forward on land it already owned. Quantum could have challenged the Order, but it again chose not to. Executive Order 03-2025 was tied to the overlay legislation and was set to expire on a fixed date, and Quantum relied on the County's representation that development would resume once the Council acted.

48. Fitzwater justified both pauses the same way, as temporary measures that would end once the Council enacted the legislation the County was developing, and each time she represented that development would then resume. Quantum accepted both on that understanding. It set aside rezonings and an APFO LOU amendment the County Code permitted it to seek, and it challenged neither pause. Throughout, it kept investing in the Campus, obtaining the Second Amended and Restated APFO LOU and site-plan approvals and spending approximately \$200 million since June 2023 on electric substations, power-supply agreements, and other utility infrastructure.

C. The Council Decides Where Data Centers Can Be Built

49. The Data Centers Workgroup that Fitzwater convened in June 2023 included representatives of environmental, agricultural, labor, and business interests. Over seven months, it held eight public meetings, took public input throughout, and heard presentations from County agencies, the local electric utility, industry, and environmental and community groups.²⁴ In March 2024, it delivered its recommendations to Fitzwater and the County Council. The Workgroup's

²⁴ *Report of the Frederick County Data Centers Workgroup* at 4, A-1, Frederick Cnty. Data Ctrs. Workgroup (Mar. 1, 2024), available at <https://frederickcountymd.gov/DocumentCenter/View/350277/Data-Center-Workgroup-Final-Report>.

report provided technical recommendations to promote the County's health, safety, and welfare—including specifications for setbacks, green energy, and impact on public utilities and infrastructure—and identified the Adamstown region, which includes the Eastalco site, as one of three regions in the County that met its criteria for data-center development.²⁵ Fitzwater used those recommendations as the basis for legislation she would propose to the Council. She explained that she “respect[s] and care[s] about process,” and that it “would undermine the public’s trust in government” if she “summarily rejected the work group’s recommendation behind closed doors and substituted my judgment for theirs.”²⁶

50. The Council then legislated in two bills, the first setting the standards data centers would have to meet and the second deciding where they could go. The first was Bill 25-05. Councilmember Renee Knapp, who had co-chaired the Workgroup, and Council President Brad Young introduced it in March 2025 to update the design and performance standards the County had applied to data centers since 2022 and to add new limits on where data centers could locate. Bill 25-05, at 1; *see* Bill 22-05. The bill wrote many of the Workgroup’s recommendations into the County Code. It adopted the Workgroup’s recommended setback of 100 feet or twice the building’s height, whichever is greater. It required Tier 4 generators at ground level and limited generator testing to weekday business hours. And it required sound and vibration studies before approval and monitoring after occupancy. Bill 25-05, Ex. 1, at 2-4, 10-12.²⁷ The Council enacted Bill 25-05 in May 2025 after six public sessions, and Fitzwater signed it.

²⁵ *Id.* at 5-12.

²⁶ Public Information Briefing: Critical Digital Infrastructure, Frederick Cnty. Gov’t (Sept. 19, 2024), *available at* https://frederick.granicus.com/MediaPlayer.php?view_id=10&clip_id=9969.

²⁷ *See also Report of the Frederick County Data Centers Workgroup* at 8, 10-12, Frederick Cnty. Data Ctrs. Workgroup (Mar. 1, 2024), *available at* <https://frederickcountymd.gov/DocumentCenter/View/350277/Data-Center-Workgroup-Final-Report>.

51. On May 6, 2025, Fitzwater and all seven members of the County Council jointly announced a compromise over the location of data-center development. It would confine data centers “to less than 1% of the County’s total land mass, in an area with the infrastructure to support it.”²⁸ And it would leave the ultimate decision with the Council, where the Frederick County Charter places it, because the compromise would “ensure the County Council retains the tools to prevent future sprawl.”²⁹ Fitzwater praised the “bipartisan compromise” as “protecting our environment and quality of life, while acknowledging that Frederick County’s location [the former Eastalco property] makes it a logical site for this critical industry.”³⁰ Where the Workgroup had identified three regions that met its criteria, the compromise narrowed the choice to a single area.

52. On June 17, 2025, Council President Brad Young introduced the compromise as Bill 25-09 “on behalf of County Executive Jessica Fitzwater.” Under the Charter, bills are introduced by Councilmembers and enacted by the Council, so a County Executive who wants a new law must ask the Council to make it. Charter §§ 202, 301. The bill’s stated purpose was to direct data centers and their substations to the region near existing data infrastructure and other industrial uses, while minimizing impacts on incompatible uses. *See also* Cnty. Code § 1-19-10.1100(A). It made data centers and their substations a principal permitted use within the overlay and barred them everywhere else. *Id.* §§ 1-19-10.1100(C)(1), 1-19-8.402(B)(1)(b), 1-19-8.403(A)(1)(b).

53. The bill confined data centers to the overlay, and in July 2025 the County’s Division of Planning and Permitting, which ultimately reports to the County Executive, proposed where the

²⁸ News Release, Frederick Cnty. Gov’t, Off. of the Cnty. Exec. (May 6, 2025), *available at* <https://www.frederickcountymd.gov/DocumentCenter/View/356132/CDI-Legislation-050625-Archived>.

²⁹ *Id.*

³⁰ *Id.*

overlay should go. It published a draft comprehensive-plan amendment and proposed overlay map for the Planning Commission's and the Council's consideration. The map identified the overlay's boundaries, acreage, and parcel-by-parcel composition: 2,566.4 acres, or 0.6% of the County's land mass.³¹

54. In releasing that map, Fitzwater stated that the County “will accept reasonable, well-regulated data center development,” but “will never accept the sprawl we’ve seen in Northern Virginia.”³² She promised “a transparent public process, with ample opportunities for you to make your voice heard,” and she assured residents that the Planning Commission and the Council would each hold hearings before any vote on the overlay.³³

55. The map the Council ultimately adopted is nearly identical to the one Fitzwater drew. The location and configuration of permitted development reflect the recommendations of the County Executive's own professional staff.

56. While the Division's map went to the Planning Commission, the Council took up the bill itself. It considered Bill 25-09 in public sessions on July 15, August 19, and August 26, 2025. During those deliberations, the Council considered a floating zone to regulate data-center development, which required parcel-by-parcel applications. Fitzwater opposed that amendment. She warned that requiring separate approvals for each project “will have the unintended consequence of pitting communities and property owners against each other and politicizing the

³¹ Critical Digital Infrastructure Overlay Zone: An Amendment of the Livable Frederick Comprehensive Plan, Frederick Cnty. Div. of Planning & Permitting (July 2025). *available at* <https://www.frederickcountymd.gov/DocumentCenter/View/357027/Critical-Digital-Infrastructure-Draft-Comprehensive-Plan-Amendment--Zoning-Map-Amendment-DRAFT?bidId=>.

³² Davis Media, *Overlay Map Describing Where Data Centers Should Go Introduced By Frederick County Executive*, WFMD Free Talk (July 8, 2025). *available at* <https://www.wfmd.com/2025/07/08/overlay-map-describing-where-data-centers-should-go-introduced-by-frederick-county-executive/>.

³³ *Id.*

process unnecessarily.”³⁴ She cautioned that “those who can afford land use attorneys and public relations firms will hold a massive and unfair advantage over those who do not.”³⁵ And she said that layering “political decision-making onto this process does not provide any certainty for residents or for the industry, which is something both parties need and deserve.”³⁶ The Council accordingly rejected the amendment on August 26, 2025.

57. On September 2, 2025, the Council passed Bill 25-09 unanimously and sent it to Fitzwater the next day. She signed it on September 12. Charter § 306(b). Later that month, Fitzwater let Executive Order 03-2025 expire on September 30, 2025 as scheduled. Bill 25-09 took effect on November 1, 2025.

58. The overlay was not a concession to the data-center industry. Bill 25-09 added new limits to the rules the Council had already imposed on data centers in Bills 22-05 and 25-05, so that the Council’s decision to allow them in the overlay came with more protection for residents and the land, not less. Bill 25-05 had already amended the County Code to bar data centers from Priority Preservation Areas, Rural Legacy Areas, and Treasured Landscape Management Areas. It also required applicants to show that impacts on viewsheds, schools, residences, sensitive ecosystems, and overburdened communities would be avoided or minimized. Cnty. Code § 1-19-8.402(B)(2), (4). Bill 25-09 kept those rules and added more. It confined data centers to the overlay. It capped the overlay at less than one percent of the County’s land. *Id.* § 1-19-10.1100(B)(4). It required the Council, in drawing the overlay, to consider proximity to schools, daycare centers, healthcare facilities, and residences. *Id.* § 1-19-10.1100(B)(3). And it increased setbacks from abutting residential land from 200 to 500 feet. *Id.* § 1-19-8.402(B)(1)(c).

³⁴ Public Information Briefing: Critical Digital Infrastructure, Frederick Cnty. Gov’t (Sept. 19, 2024), *available at* https://frederick.granicus.com/MediaPlayer.php?view_id=10&clip_id=9969.

³⁵ *Id.*

³⁶ *Id.*

59. The Bill did not, however, say where the overlay would be. It provided that the Council would create the overlay “with the boundaries established by ordinance and identified on the Zoning Map.” Cnty. Code § 1-19-10.1100(B)(1). And it permitted the overlay only on land that the County’s comprehensive plan designated for industrial use. *Id.* Drawing the overlay therefore required two further steps. The Council would first amend the comprehensive plan to designate the overlay land for industrial use, and then adopt an ordinance mapping the overlay to specific parcels. The draft comprehensive-plan amendment and map that the Division of Planning and Permitting had published in July 2025 became the basis for both.

60. The proposed amendment and map then went to the Planning Commission. The Commission held public hearings on July 16 and October 15, 2025, at which residents and stakeholders testified, and it received scores of written comments. The Commission ultimately recommended a map smaller than the one proposed by the County Executive.

61. In December 2025, while the Council was finalizing the overlay map, a new State law took effect directing the Department of Legislative Services to study the environmental, energy, and economic impacts of data-center development. The law required a final report by September 1, 2026. Md. Acts 2025 Sp. Sess., ch. 10. It did not restrict local permitting, and it required nothing of the County. The County had already studied those subjects for itself. The Workgroup had examined the energy, water, environmental, and fiscal effects of data centers in Frederick County, the Council had acted on that work in Bill 25-05,³⁷ and the County had measured the Campus’s own demands on public facilities through the APFO LOU process.³⁷

³⁷ *Report of the Frederick County Data Centers Workgroup* at 5-16, Frederick Cnty. Data Ctrs. Workgroup (Mar. 1, 2024), available at <https://frederickcountymd.gov/DocumentCenter/View/350277/Data-Center-Workgroup-Final-Report>.

62. The Council took up the amendment and map in December 2025. At its meetings on December 16 and 17, 2025, residents, advocacy groups, and a council member asked the Council to postpone action until the Department of Legislative Services issued its report on data-center impacts. The Council heard those requests but, because of the extensive work the County had already done to understand the impacts of data center development, decided to move forward. Frederick Cnty. Council, Meeting Minutes (Dec. 16–17, 2025).

63. The overlay’s boundaries also reflected an exchange between the County and Quantum. During the overlay’s development, Fitzwater’s staff asked Quantum to keep data-center development away from the Adamstown community. Quantum agreed to give up the industrial zoning on approximately 107 acres of its land nearest Adamstown. In exchange, the County agreed to place within the overlay approximately 400 acres at the northern end of the Campus, well away from the Adamstown community. That land included approximately 400 acres then zoned agricultural, which the County would rezone for industrial use (the “Phase III Parcel”).

64. Quantum did not have to give up the parcels near Adamstown. They were zoned for industrial use, and under the law then in effect, Quantum could have sought approval to develop them for data centers, if not for Fitzwater’s improper Executive Orders. Quantum agreed to give them up at the County’s request because the County committed to placing the Phase III Parcel within the overlay by law, and because Fitzwater had represented that once the Council enacted the overlay, development would proceed. The Division of Planning and Permitting supported an expanded overlay map that reflected the exchange. It omitted the parcels near Adamstown and included the Phase III Parcel.

65. On January 20, 2026, the Council adopted Resolution 26-01, amending the County’s comprehensive plan, and Ordinance 26-01-001, mapping the overlay to specific parcels.

The adopted overlay covers approximately 2,615 acres, or 0.61% of the County's land, and is nearly identical to the Planning Division's July 2025 draft. The Ordinance placed the Phase III Parcel within the overlay and designated the parcels near Adamstown as natural resources usage (stripping them of all economic value). In it, the Council found that the overlay was "designed to create predictability for the community and the data center industry," and that it would "best promote health, safety[,], order, convenience, prosperity, and general welfare." Ordinance 26-01-001.

66. Because County law bars data centers in Rural Legacy Areas, overlay land within a Rural Legacy Area could not be developed until it was removed from the program. The Council decided that this land belonged in the overlay, and it took the steps needed to remove it. Resolution 26-01 modified the affected Rural Legacy Area boundaries, and the Council approved the County's application asking the State Rural Legacy Board to remove approximately 1,118 acres of overlay land from the program. Under Bill 25-09, applications to rezone that land cannot be accepted or processed until the State approves the revised Rural Legacy map. Cnty. Code § 1-19-10.1100(B)(6)(b).

67. By the time the overlay reached the Council, Quantum had accepted two pauses that no law authorized, given up the parcels near Adamstown at the County's request, and taken part in every stage of the County's process. It had done all of that on the County's commitment that development would proceed once the Council acted. And since the Workgroup began its work, County officials had consistently identified the Eastalco site as the right place for data-center development. The County had also studied the Campus itself. Through the APFO LOU process, it had measured the demands of more than 18 million square feet of development on the County's roads, water, and sewer, and it had then studied data centers countywide through the Workgroup

and legislated on them twice, in Bill 25-05 and Bill 25-09. Relying on the County's promises and commitments to the legislative process, Quantum continued to design the rest of the Campus as one integrated campus covering both the land under the APFO LOU and the Phase III Parcel, and it sized the Campus's core infrastructure to serve the whole. That infrastructure includes electrical switchyards, transformation substations, an integrated fiber network, and water and sewer infrastructure necessary to develop the entirety of the Campus. Quantum did this work openly, discussing its plans with County staff and presenting them to the County at various points. Quantum has committed approximately \$200 million to that work.

68. Through more than two years of process, Quantum did what the County asked of it. When Fitzwater paused development without legal authority, Quantum waited, twice. When the County asked it to keep data centers away from Adamstown, Quantum gave up the industrial zoning on land it could have developed. When the Workgroup met, when the Planning Commission held its hearings, and when the Council took testimony, Quantum took part alongside residents and other stakeholders. And all the while, it kept investing in the Campus, moving forward with the approvals it had already received, which required developing the broader infrastructure of the Campus in tandem. Quantum did these things because the County and Fitzwater had made clear that the question of where data centers could be built would be decided openly, by the Council, through the process the Charter and the law require, and because it trusted the County to honor that decision once it was made.

69. On January 20, 2026, the Council finished the work that began when Fitzwater convened the Workgroup in 2023. The Council, the body the Charter charges with the decision, had decided where data centers could be built in Frederick County. It did so after more than 30 public meetings and hearings before the Workgroup, the Planning Commission, and the Council

itself. The Council considered the request to wait for the State study and declined it, and it carried out the County's side of the exchange with Quantum. Despite the pauses that preceded it, which no law authorized, the decision itself was reached the way the Charter and the law require, by the elected Council, in public, after hearing from everyone who wished to be heard.

D. Quantum Defends the Council's Decision, and the Supreme Court Upholds It

70. The Ordinance took effect the day the Council adopted it, but the Council's decision was challenged almost immediately. The next day, the Frederick County Data Center Referendum Committee asked the County Board of Elections for an advance determination on a petition to refer the Ordinance to referendum. *In re Frederick Cnty. Data Ctr. Referendum Comm.*, 496 Md. 71, 88–89, 361 A.3d 965, 975–77 (2026). In March 2026, it submitted a petition with 24,053 signatures, of which the Board validated 21,029. *Id.*

71. Before the Committee collected a single signature, the County's own lawyer had told Fitzwater and the Council that the Ordinance could not be referred. On January 20, 2026, the day the Council acted, County Attorney Bryon Black advised Fitzwater and the Council that neither Resolution 26-01 nor the Ordinance was a "law" subject to referendum under the Charter. He explained that since Frederick County became a charter county, the Council had never treated resolutions or ordinances as laws subject to referendum. *Id.* at 87, 361 A.3d at 975.

72. Despite her own lawyer's advice, Fitzwater did not act on it. On March 18, 2026, she wrote to the Board of Elections urging it to count and verify the petition signatures before deciding whether the Ordinance could lawfully be referred.³⁸

³⁸ Ryan Marshall, Fitzwater, Young Urge Elections Board to First Determine If Petition Signatures Are Valid, *Frederick News-Post* (Mar. 18, 2026), *available at* https://www.fredericknewspost.com/news/continuing_coverage/zoning/fitzwater-young-urge-elections-board-to-first-determine-if-petition-signatures-are-valid/article_15b64742-77c7-5a8a-8c48-23b31149a1c7.html.

73. On April 3, 2026, the Board's Election Director certified the petition as sufficient. She did not find that the Ordinance could lawfully be referred. She stated that she could not decide that question either way, and certified the petition based on what she called a "presumption of sufficiency." *In re Frederick Cnty. Data Ctr. Referendum Comm.*, 496 Md. at 90, 361 A.3d at 977-78. The certification suspended the Ordinance pending a public vote.

74. Since the Council adopted the Ordinance in January, Quantum had been ready to submit its preliminary plan of subdivision for the Phase III Parcel to the Planning Commission and its APFO LOU amendment to include all industrially zoned parcels that were included in the Overlay. The certification put that plan on hold, because with the Ordinance suspended, the Phase III Parcel was no longer within the overlay and the plan could not go forward.

75. With its development on hold and the County standing aside, Quantum took the lead in challenging the certification. It filed a petition for judicial review and for declaratory relief in the Circuit Court for Frederick County, as did other landowners in the overlay and three County voters, naming the Referendum Committee, the Board of Elections, and the Election Director as respondents. *In re Frederick Cnty. Data Ctr. Referendum Comm.*, 496 Md. at 90–91, 361 A.3d at 978. The County was not a party and took no part in defending its own Ordinance. Quantum carried the case for the petitioners, briefing and arguing the principal issues, developing the evidentiary record, and presenting the testimony on which the courts relied.

76. After expedited litigation, the Circuit Court ruled for Quantum and the petitioners on both grounds. After receiving extensive evidence and hearing testimony, it reversed the certification and declared that the Ordinance was not subject to referendum under the Charter and that the petition was deficient. *Id.* at 91–92, 361 A.3d at 978-79. The Referendum Committee appealed directly to the Supreme Court of Maryland.

77. The Supreme Court heard argument on an expedited basis on June 30, 2026, and affirmed the same day by per curiam order. It explained its decision in a published opinion on July 24, 2026. The Court held that the Ordinance was not subject to referendum, and separately that the petition was deficient because it did not reproduce the Ordinance's maps fully and accurately. *Id.* at 99, 107–08, 361 A.3d at 983, 988–89.

78. The Court's reasoning confirmed how land-use decisions are made in Frederick County. When the County adopted its Charter, it carried forward the Land Use Article as it had governed the County before, so that the procedures for land-use decisions would not change. *Id.* at 97–99, 361 A.3d at 981–83 (discussing Charter § 601). Under those procedures, the County's legislative body enacts zoning by ordinance, and zoning ordinances are subject to judicial review, not referendum. *Id.* at 77–78, 99, 361 A.3d at 969–970, 983. Consistent with that structure, the Council adopted the Ordinance without presenting it to the County Executive, as it has done with zoning ordinances since the Charter took effect. *Id.* at 87–88, 361 A.3d at 975–76. The County Executive has no role in their enactment.

79. The Court was careful to say that it was not taking sides on data centers, only answering legal questions about the Charter. *Id.* at 75, 361 A.3d at 968. Its answer was that the Council's zoning decision stood.

80. The Supreme Court's decision on June 30, 2026 resolved the last challenge to the overlay. The Council had made its decision, the courts had upheld it, and every condition Fitzwater had set in 2023 for lifting her pause had been met, so nothing remained to keep Quantum from submitting its Phase III applications through the process the County Code provides. But the day before, Fitzwater's Chief of Staff had already called Quantum's Executive Vice President to tell him that once the Court ruled, she would issue another moratorium.

E. The Moratorium, the Agreement, and the Reversal

81. The June 2026 primary changed Fitzwater's calculus. While Quantum was defending the Data Center Enactments in court, Fitzwater endorsed a slate of candidates for the County Council. All but one of them lost.

82. Fitzwater had already planned what would follow. At 6:12 p.m. on June 30, 2026, hours after the Supreme Court ruled, her Chief of Staff emailed an outside firm the County had retained, copying County Attorney Bryon Black. Exhibit A. He wrote that because the Court had ruled, "we can move forward with negotiating a community benefit agreement with Catellus." He explained that the County Executive wanted to announce the next day "(Court done, negotiations to start)," and that she "will want to meet with you before things begin in earnest." The email said nothing about the State study, or about any need to pause development pending it.

83. The following day, July 1, 2026, Fitzwater issued the order her Chief of Staff had previewed to Quantum on June 29. Executive Order 04-2026 took effect immediately. It directed County staff to stop accepting and processing applications for the development the overlay authorizes through December 31, 2026. In the June 29 call, the Chief of Staff explained the coming order by relaying Fitzwater's disappointment in the primary results. Her staff acknowledged privately that the moratorium was only "to get past the election." And Quantum would have to negotiate with its project frozen.

84. Fitzwater issued that order at the moment every condition she had set for development was met. In 2023, she had promised to lift her pause "after the legislative process is complete and the new regulations are in effect."³⁹ The legislative process was complete. The regulations were in effect. The day before, the Supreme Court of Maryland had resolved the last

³⁹ Public Information Briefing: Critical Digital Infrastructure, Frederick Cnty. Gov't (Sept. 19, 2024), *available at* https://frederick.granicus.com/MediaPlayer.php?view_id=10&clip_id=9969.

challenge to them, in litigation the County did not join and Quantum carried at its own expense. Fitzwater had told residents it would undermine public trust if she “substituted my judgment for theirs.” She had warned that political decision-making would deny residents and the industry the certainty both “need and deserve.”⁴⁰ Within a day of the Court’s decision, she substituted her judgment for the Council’s, by executive order, for reasons her own staff had described as political before the Court ruled.

85. Executive Order 04-2026 identified one justification: the State study of data-center impacts. Chapter 10 of the Acts of the Maryland General Assembly, 2025 Special Session, directs the Department of Legislative Services to analyze the environmental, energy, and economic impacts of data-center development and to issue a final report on or before September 1, 2026. Md. Acts 2025 Sp. Sess., ch. 10. The Council had considered waiting for that report before adopting the overlay, and it had declined. Executive Order 04-2026 imposed the delay the Council had refused, and extended it four months past the date the report was due.

86. Quantum objected to Fitzwater’s unilateral and unlawful act. In mid-July 2026, Quantum’s counsel wrote to Fitzwater explaining that the moratorium exceeded her authority, and Quantum’s leadership met with Fitzwater twice in two weeks. Quantum told Fitzwater that it could not allow its project to stall based on the illegal moratorium, and that the moratorium placed at risk a pending transaction worth hundreds of millions of dollars.

87. With Quantum’s development frozen, Fitzwater reopened community-benefit negotiations. The Data Center Enactments already governed where and how data centers could be built, and nothing in them required Quantum to pay more to proceed. But the moratorium gave Fitzwater leverage, and an agreement would give her something to announce. As it had before,

⁴⁰ *Id.*

Quantum chose to work with the County rather than litigate. It negotiated in good faith to keep its project moving.

88. Fitzwater coordinated those negotiations herself. The County Code assigns the negotiation of a development rights and responsibilities agreement to the County Executive. Cnty. Code § 1-25-3(H). Fitzwater opened the discussions with Quantum's leadership. Her staff carried them forward at her direction, and the terms went back to her for decision. She approved some provisions and rejected others. She set the amounts she wanted. And she asked Quantum's Executive Vice President to agree to testify in Annapolis in favor of higher taxes on data centers as a condition of the County's approvals.

89. The result was an agreement under which Quantum offered the County more than \$110 million in community benefits. Fitzwater agreed to all its terms, and Quantum paid the required filing fee. The County also agreed to lift the moratorium and to process Quantum's application to amend its APFO LOU.

90. On September 1, 2026, Fitzwater announced the agreement at a press conference, touting it as "the largest agreement of its kind" in "the entire United States."⁴¹ She presented it to the public as her achievement. The announcement opened a ten-day public comment period that ran through September 11, 2026. Fitzwater assured Quantum that she would then forward the agreement to the Planning Commission and the County Council. Staff asked Quantum to submit the third amendment to its APFO LOU to reflect the terms of the agreement. Relying on the County's commitment to lift the moratorium and process its application, Quantum submitted the

⁴¹ Fitzwater announces \$110M in data center benefits, reduction of planned development, The Frederick News-Post, available at <https://www.yahoo.com/news/us/articles/updated-fitzwater-announces-110m-data-231700671.html>.

third amendment, covering all its land eligible for data-center development under the Data Center Enactments.

91. Then the politics changed again, and so did Fitzwater. Upon information and belief, Fitzwater received negative polling results over the weekend of September 12–13, 2026. On Monday, September 14, the Chief of Staff called Quantum’s Executive Vice President to tell him that Fitzwater was walking away from the agreement and would refuse Quantum’s APFO LOU amendment. The same day, Fitzwater told a campaign donor in a telephone call that she had to take that step if she wanted to win the general election.

92. And the same day, she did it. She rejected the agreement she had negotiated and announced thirteen days earlier. She directed staff to refuse Quantum’s APFO LOU amendment. And she issued Executive Order 05-2026, extending the moratorium to July 1, 2027, ten months past the date the State study was due and well past the new County Council being seated.

93. Fitzwater’s September 14 letter to Quantum conceded the agreement’s value. She acknowledged that Quantum’s proposal “would have met critical needs in Adamstown and made the Frederick Digital Campus more sustainable.” She rejected it anyway, asserting that “the cost of those benefits would have been too great for our community” and, despite the fact that she approved every provision in the Agreement, claimed that “provisions that would have shielded the development from all future local laws are unacceptable.” On that basis, she announced that she would not forward the agreement to the Planning Commission and would direct the Division of Planning and Permitting not to accept Quantum’s application to amend its APFO LOU.

94. Fitzwater’s stated reason was inaccurate and untrue. The agreement contained no provision shielding the development from all future local laws. It did two things. First, as the County Code expressly permits, it fixed the zoning rules that would apply to the Campus for the

agreement's term. Cnty. Code § 1-25-9(A). Second, if the County later took action impairing the development, Quantum could recover a proportionate amount of the community benefits it had paid. The agreement did not bar the County from legislating. Nor could it. Under the County Code, an agreement may not prevent the County from applying later-enacted zoning laws that the County determines are essential to health, safety, or welfare, may not prevent the application of laws other than zoning laws, and may not last longer than eight years. *Id.* §§ 1-25-9(B)-(C), 1-25-12. Fitzwater's administration negotiated those terms, and she knew what they said.

95. Like its predecessor, the Order directs the County's Planning and Permitting Division staff to "temporarily discontinue accepting, considering, processing, or reviewing any applications for Critical Digital Infrastructure Facilities and Critical Digital Infrastructure Electric Substations, as determined by County Staff."⁴²

96. The Order exempts one category of property: land that "has obtained any approved Adequate Public Facilities Ordinance Letter of Understanding prior to June 17, 2025." June 17, 2025 is the day Bill 25-09 was introduced. The exemption therefore covers development approved before the Council's legislation, while the Order reaches the development the Data Center Enactments made possible. That includes the Phase III Parcel, which the Council placed in the overlay and which holds no APFO LOU.

97. The Order's predecessor was recently applied to Quantum. Quantum submitted its application for an amended APFO LOU on September 3, 2026. On September 8, the Division of Planning and Permitting refused it. The Division gave a single reason, stating that it "may not accept" Quantum's application "due to Executive Order No. 04-2026." The Order continues that bar through July 1, 2027.

⁴² <https://www.frederickcountymd.gov/ArchiveCenter/ViewFile/Item/17236>

98. The Order invokes no specific source of authority because none exists. It purportedly rests on the County Executive's power under "the Charter of Frederick County, Maryland, and the Laws of the State of Maryland."⁴³ But no provision of the Charter and no statute authorizes a County Executive to suspend duly enacted laws and ordinances. The Maryland Declaration of Rights forbids it. *See* Md. Const. Decl. of Rts. art. 9. And the Charter gives the County Executive no role in enacting zoning ordinances at all. The Council adopted the Ordinance without presenting it to her, as it has done with zoning ordinances since the Charter took effect. *See In re Frederick Cnty. Data Ctr. Referendum Comm.*, 496 Md. at 85, 361 A.3d at 973-74.

99. The State study supplies no basis for the Order either. Chapter 10 directs a State agency to write a report. It halts no construction, freezes no permitting, and imposes no obligation on Frederick County. The County plays no role in the study and does not have to wait for it. And the study concerns matters the County does not regulate. It examines the environmental and energy impacts of data centers, and Fitzwater's own orders acknowledge that authority over air quality, energy generation, and electricity use "lies with the State of Maryland." Whatever the study finds, any response to it on those subjects would come from the State, not the County.

100. As alleged below, Fitzwater has since explained that she paused development because of the primary election results. The Order, in other words, is not waiting for the State's report but for the election, and in issuing it, Fitzwater has put her own reelection ahead of the law she is charged with carrying out.

F. Fitzwater Asks The State To Override The County Council

101. Fitzwater also worked to undo the Council's decision at the State level. When it adopted the overlay, the Council removed approximately 1,118 acres of overlay land from the

⁴³ *Id.*

Carrollton Manor Rural Legacy Area and approved the County's application asking the State Rural Legacy Board to approve that change. On July 28, 2026, four weeks after she froze data-center applications, Fitzwater wrote to the Board's Chair and asked him to table the County's own application.⁴⁴ She asked the Board to postpone its consideration until the moratorium had ended because "circumstances regarding data center development in Frederick County have changed," citing the same State data-center study the Council had declined to wait for. Two days later, the Chair tabled the application. As a result, no data-center development can occur on that land until at least 2027.

102. In asking the Board to hold the County's application, Fitzwater was asking it to set aside a decision that was not hers to revisit. The Charter vests the County's legislative power in the Council, and the Council made this decision through Resolution 26-01 and its approval of the County's application. Fitzwater herself has acknowledged that by the time residents asked the Council to wait for the State study, the decision was out of her hands.⁴⁵ She explained that these were matters that concerned the "health, safety, and welfare of [the County's] residents."⁴⁶ Yet she unlawfully asked a State board for that delay, upon information and belief, to push any action past the November election.

G. Fitzwater Admits Why She Froze The Law

103. By September 2026, the Data Center Enactments had been through every step the law requires. The Council had adopted them after more than two years of public process, including the Workgroup's meetings, the Planning Commission's hearings, and the Council's own processes

⁴⁴ <https://frederickcountymd.gov/DocumentCenter/View/374829/20260728-Secretary-Kurtz---Carrollton-Manor-Rural-Legacy-Area>.

⁴⁵ Nathanael Miller, *Frederick County Executive Requests Pause on Data Center Land Use Vote*, WYPR (July 30, 2026, 9:55 AM), <https://www.wypr.org/wypr-news/2026-07-30/frederick-county-executive-requests-pause-on-data-center-land-use-vote>.

⁴⁶ <https://frederickcountymd.gov/DocumentCenter/View/374829/20260728-Secretary-Kurtz---Carrollton-Manor-Rural-Legacy-Area>.

and hearings. The Supreme Court of Maryland had held that the Council's zoning decision could not be suspended even through referendum. Under the Charter, the County Executive's role was to carry that decision out. Fitzwater instead froze it, first on the day after the Supreme Court ruled, and again on the day she abandoned the agreement she had announced.

104. On its face, the Order rests on a single justification: the pending State study. But in the ten days after issuing it, Fitzwater gave a different account. In a letter her campaign sent to voters on September 21, 2026, and in an interview with the Frederick News-Post published two days later, she explained why she had rejected Quantum's agreement and frozen the applications the Data Center Enactments permit. Neither account mentions the State study. In her own words, both describe the Order's real purpose.

105. For three years, Fitzwater had pointed to the Eastalco Campus as proof that the County could manage data-center development well. She had called the site just the place for it, credited its taxes with balancing the County's budget, and on September 1 presented Quantum's agreement as "the largest agreement of its kind" in "the entire United States."⁴⁷ Two weeks later, she reversed course. And one week after that, in a letter to voters describing "exactly where I stand on data centers," she announced that she had "rejected the Catellus application for a data center agreement on the Frederick Digital Campus."⁴⁸

106. The letter recasts Quantum, a partner Fitzwater had praised, and an agreement she had orchestrated and negotiated as suddenly adverse to the County's residents. It was not. The agreement reflected Quantum going beyond anything the law required to deliver additional

⁴⁷ Fitzwater announces \$110M in data center benefits, reduction of planned development, The Frederick News-Post, *available at* <https://www.yahoo.com/news/us/articles/updated-fitzwater-announces-110m-data-231700671.html>.

⁴⁸ Jessica Fitzwater (@JessicaFitzwaterforFrederick), Facebook (Sept. 21, 2026), (posting campaign letter to "Frederick County Neighbor[s]").

benefits to Frederick County. The letter offers no reason grounded in the Campus or its impacts. Instead, Fitzwater cast her reversal as “bigger than one project,” a choice between “the people who live here” and “powerful corporations seeking special protections from the laws we may need tomorrow.”⁴⁹ She tied the industry to “Donald Trump, Elon Musk, and their billionaire friends.”⁵⁰ *Id.* But Quantum never sought special protection. It simply seeks to proceed under the Data Center Enactments, a framework that Fitzwater sponsored and signed into law. And however broadly she now frames her “latest” decision, it falls on one project: Quantum’s. Nothing about Quantum’s project changed between September 1 and September 21. What changed was Fitzwater’s political position.

107. In the same letter, Fitzwater told voters, “As County Executive,” “I’ve never approved a single data center.” She offered that as a credential. But the Charter gives the County Executive no power to approve or disapprove a data center. The Council decides where data centers may be built, and within the overlay it made them a principal permitted use, subject only to site plan approval. Cnty. Code §§ 1-19-10.1100(C)(1), 1-19-5.310 (use table). There is nothing for the County Executive to approve. When Fitzwater tells voters she has never approved a data center, she is describing a power the law does not give her, and the Order is how she has used it.

108. The letter also pledged to “make existing data centers the highest taxed industry in Maryland” and to make the industry pay for the County’s infrastructure “because, frankly, we know they can afford it.”⁵¹ Fitzwater had already applied that standard to Quantum. In the negotiation she ran, she set the benefits she demanded by what she believed Quantum could pay rather than by any impact of its development. She further asked Quantum’s Executive Vice

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ Jessica Fitzwater (@JessicaFitzwaterforFrederick), Facebook (Sept. 21, 2026), (posting campaign letter to “Frederick County Neighbor[s]”).

President to agree to testify in favor of higher taxes on data centers as a condition of the County's approvals. Yet after extracting those commitments, she rejected the agreement and campaigned against the company she partnered with to make them.

109. Two days later, Fitzwater told the Frederick News-Post that her July pause was a response to the results of the June primary.⁵² The County should not accept new data-center applications, she said, because "the writing is on the wall from the primary."⁵³

110. Fitzwater also pledged to change the overlay herself, stating that in a second term she would begin the process to "permanently reduce the size of the [data center zone] overlay."⁵⁴ A County spokesperson has since explained that she would shrink the overlay to the properties that already hold APFO LOUs, to about 1,376 of its 2,615 acres.⁵⁵

111. Taken together, Fitzwater's statements describe what the Order does. The Council enacted the Data Center Enactments, and the courts upheld them. The Council has not changed them, and by Fitzwater's own account it cannot in the time it has left. So she has frozen them until a Council that does not yet exist can act. She has also confirmed that the freeze is working as she intended, predicting that without it at least one data-center developer would have filed a new application before the end of the year.⁵⁶

112. Fitzwater did all of this knowing that she lacked the authority to do it and knowing what it would cost Quantum. She knew that the decision of where data centers may be built belongs to the Council. She had said so publicly, and she had acknowledged that once the Council's process was underway, the decision was out of her hands. She knew that the Council

⁵² Erik Anderson, *Fitzwater Pledges to Reduce Data Center Zone in Second Term*, Frederick News-Post (Sept. 23, 2026), <https://thefnp.com/tncms/asset/editorial/76cd5aa6-2329-4653-b7fa-ca7fb7530c96/>.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

had considered waiting for the State study and declined. She knew the terms of the agreement she rejected, because her administration negotiated them, and she knew that her stated reason for rejecting it was false. And she knew the consequences. Quantum's leadership told her twice in person that it placed a transaction worth hundreds of millions of dollars at risk, and that the County would face substantial liability. She kept the moratorium in place anyway, and two months later she extended it. Neither the limits of her office nor the cost to the County outweighed the pressures of her reelection campaign.

113. Fitzwater and her staff have said as much. Her staff called the moratorium a way "to get past the election." She told a campaign donor that she had to reject Quantum's agreement if she wanted to win the general election. She told the press that she froze development because of the primary. And when she explained her decision to voters, she singled out "the Catellus application" by name, even as she called the decision "bigger than one project." When an agreement with Quantum served her politically, she negotiated it and celebrated it. When the political winds shifted, she did too. She rejected the agreement, froze Quantum's development, and turned Quantum into a campaign issue.

H. Defendants' Conduct Has Caused, and Continues to Cause, Substantial Harm to Quantum

114. Defendants have barred Quantum from using the land the Council placed in the overlay. Since January 2026, Quantum has been ready to submit its APFO LOU amendment and preliminary plan of subdivision for the Phase III Parcel. The Order bars the County from accepting or processing that plan, and the Division of Planning and Permitting has already refused it, citing the moratorium. Fitzwater's September 14 directive bars the Division staff from accepting Quantum's application to amend its APFO LOU to cover the rest of its land eligible under the Data

Center Enactments. And her request to the Rural Legacy Board has kept approximately 15 acres of one of Quantum's approved parcels from development until at least 2027.

115. The Order has already cost Quantum a transaction valued at more than \$500 million. Quantum is developing the Campus to sell land and capacity to data-center operators and to purchasers who build and operate facilities on it. Quantum signed a Letter of Intent for a transaction valued at more than \$500 million and planned to close in July 2026. After Fitzwater issued Executive Order 04-2026, the transaction was held pending the community-benefits negotiation. When Fitzwater agreed to the community-benefits package, the transaction moved forward. When she rejected that agreement and extended the moratorium through July 2027, the transaction fell apart again.

116. Fitzwater knew that would happen. In July 2026, Quantum told her that the moratorium placed the transaction at risk and that the County would face substantial liability if it failed. She extended the moratorium anyway.

117. The Order also places Quantum's other business relationships at risk. Prospective buyers are unwilling to sign agreements, and instead are looking to other projects to meet their time-sensitive needs. Each depends on a development timeline the Order has frozen. Each remains at risk for as long as the Order stays in force.

118. Delay alone imposes substantial costs that grow every day. While the Order keeps the Phase III Parcel frozen, Quantum continues to carry insurance, maintenance, and the cost of infrastructure built to serve the whole Campus, as well as the real estate taxes the County continues to collect on the land. Those costs are significant. They are separate from, and in addition to, the value of the lost transaction, and they accrue for every day the Order remains in force.

119. Defendants have also deprived Quantum of the exchange it made with the County. Quantum gave up the industrial zoning on the parcels near Adamstown, and the County has kept that benefit. Land near Adamstown will remain free of data centers, as the County wanted. In return, the Council placed the Phase III Parcel in the overlay. The Order bars Quantum from developing it, and Fitzwater has said she intends to remove it from the overlay altogether. The County has kept what Quantum gave up, and Quantum has been denied what it received.

120. Quantum also built improvements sized for a campus that includes the Phase III Parcel. It sized the Campus's substation, power-switching equipment, and fiber network to serve Phase III, and it planned a water-treatment facility capable of processing five million gallons per day, five times what the rest of the Campus needs.

121. The County, meanwhile, continues to seek the benefits of Quantum's development. It collects real estate taxes on the Campus, and it has announced that it will continue to pursue a community-benefits agreement tied to the Campus, even as the Order blocks the development that would fund those benefits.⁵⁷

122. Much of Quantum's injury cannot be repaired with money. A later damages award cannot restore Quantum's place in the development timeline, revive transactions that depend on that timeline, or repair the business relationships and market position that a delay of this length damages. The Order continues to bar Quantum's Phase III applications, depriving Quantum of its constitutional rights.

123. Each Defendant is responsible for these injuries. Fitzwater issued Executive Order 04-2026 and the Order, rejected the agreement she had negotiated, directed staff to refuse Quantum's APFO LOU amendment, and asked the Rural Legacy Board to hold the County's

⁵⁷ Jessica Fitzwater (@JessicaFitzwaterforFrederick), Facebook (Sept. 21, 2026), (posting campaign letter to "Frederick County Neighbor[s]").

application. She did each of these things as the County's chief executive, exercising final authority on the County's behalf, and the County is responsible for her acts. The Division of Planning and Permitting has carried out her directives, refusing to accept or process Quantum's applications under the Order. The Planning Commission, meanwhile, failed to assert its independence or require its staff to preserve the access required by law. And Fitzwater is personally responsible, because she acted knowing she lacked the authority to do so and for her own political benefit, as alleged above.

124. Defendants' liability to Quantum already exceeds \$500 million, and it grows with each day the Order remains in force. That liability does not arise from the Data Center Enactments, which Quantum has complied with at every step. It arises from the Order.

125. For five years, Quantum has worked with the County, accepted its pauses, made the concessions it asked for, and invested in reliance on its laws. It brings this action because Defendants have left it no other way to protect the rights the County's enactments confer. Those laws protect Quantum only if the County's officials follow them, and the same is true for every resident, landowner, and business in Frederick County that relies on them.

CLAIMS FOR RELIEF

COUNT I

Declaratory Judgment—Ultra Vires

(Md. Const. Decl. of Rts. art. 8; Frederick County Charter §§ 202, 402)

(Against the County, Fitzwater in Her Official Capacity, and the Planning Commission)

126. Quantum incorporates by reference the allegations of the preceding paragraphs as if fully set forth here.

127. The power to regulate land use in Frederick County belongs to the County Council, not the County Executive. The Maryland Constitution vests in each charter county's legislative

body “full power to enact local laws.” Md. Const. art. XI-A, § 3. The Maryland Code grants each charter county the authority, by legislative enactment, to adopt land-use laws that protect the public health, safety, morals, and welfare. Md. Code Ann., Local Gov’t §§ 10-102, 10-324.

128. The Order relies on a power the Charter assigns to the Council alone. Executive Order 05-2026 invokes only a general grant of authority—the Charter of Frederick County and the laws of the State—and does not rest on any finding committed to the Executive. The Frederick County Charter commits the protection of the public health, safety, and welfare through land-use regulation to the County Council. Charter § 301; Md. Code Ann., Local Gov’t § 10-324. The County Executive’s order cannot make that legislative judgment in the Council’s place.

129. The Council already exercised that power when it enacted Bill 25-09, Resolution 26-01, and Ordinance 26-01-001. Indeed, Ordinance 26-01-001 recites that the Council “has determined that the zoning and land use designation changes set forth in Exhibit A are . . . designed to create predictability for the community and the data center industry, and . . . to best promote health, safety[,] order, convenience, prosperity, and general welfare.” Ordinance 26-01-001. The Council thus made the health-and-welfare judgment the Charter assigns to it. The County Executive’s invocation of the same interests does not execute the Council’s judgment—it substitutes her own for it. She thus exercises a power the Charter does not give her.

130. The Frederick County Charter divides that authority along separation-of-powers lines. It vests the legislative power in the County Council and directs the County Executive to “faithfully execute the laws.” Charter §§ 202, 402. The Maryland Declaration of Rights reinforces the division, providing that the legislative, executive, and judicial powers “ought to be forever separate and distinct” and that no person exercising the functions of one department “shall assume or discharge the duties of any other.” Md. Const. Decl. of Rts. art. 8.

131. An act is legislative when it “mak[cs] a new law—an enactment of general application prescribing a new plan or policy,” and executive when it “merely looks to or facilitates the administration, execution or implementation of a law already in force.” *Scull v. Montgomery Citizens League*, 249 Md. 271, 282, 239 A.2d 92, 98 (1968). Zoning is a legislative function in Maryland, and the adoption or suspension of land-use controls is a legislative act. *Mayor & Council of Rockville v. Rylyns Enters., Inc.*, 372 Md. 514, 541-43, 814 A.2d 469, 485-86 (2002); *Turf Valley Assocs. v. Zoning Bd. of Howard Cnty.*, 262 Md. 632, 640-42, 278 A.2d 574, 578-79 (1971). A moratorium that suspends the acceptance and processing of land-use applications makes law; it does not execute it.

132. The Supreme Court of Maryland has already condemned the maneuver the County Executive attempts here. In *County Executive of Prince George's Cnty. v. Doe*, a County Executive issued an order barring a lawful activity at county hospitals without consulting the independent hospital commission the law charged with those facilities. 291 Md. at 679-80, 436 A.2d at 460-61. The Court affirmed an injunction voiding the order, holding that the Charter gave him no authority “to refuse to observe existing laws enacted by the Council.” *Id.* at 684-85, 436 A.2d at 463-64. The parallel is exact. Fitzwater issued an order suspending a lawful land use, bypassing the Planning Commission that Maryland law charges with acting on these applications. She made policy the Charter reserves to the Council, and she did so by circumventing the independent body the General Assembly designated to decide the matter.

133. Executive Order 05-2026 suspends the legislation the Council enacted in Bill 25-09 and Ordinance 26-01-001. The Order suspends the operation of the overlay zone and the development of data centers by barring the acceptance, consideration, and processing of the applications the overlay permits. The County Executive did not execute the law; she suspended it

and imposed the contrary policy the Council had declined to adopt. Fitzwater has admitted as much. She has explained that she paused data-center applications in response to the primary results. An executive who freezes legislation to boost her odds of reelection makes policy; she does not execute the law.

134. The Order parallels *Doe* in a further respect: it removes a decision from the independent body the law charges with making it. Maryland law allows each charter county to establish a planning commission; the law then fixes the terms of its members, and assigns to it the authority to act on plans and applications and to advise the legislative body on land-use matters. Md. Code Ann., Land Use §§ 2-101, 2-102, 3-203, 5-201. The Frederick County Code carries that assignment forward, directing the Planning and Permitting Division to present its recommendations to the Planning Commission and directing the Commission—not the County Executive—to approve, conditionally approve, or disapprove a preliminary plan at a public meeting. Cnty. Code § 1-16-71(I)-(J). By directing staff to refuse the applications, the County Executive did not merely suspend the overlay; she displaced the authority the Code assigns to the Planning Commission to decide those applications, as the executive in *Doe* bypassed the independent hospital commission the law charged with those decisions.

135. Because the Order exercises a legislative power the Charter reserves to the Council, it exceeds the County Executive's authority and is void. An actual controversy exists concerning the Order's validity. Quantum is entitled to a declaration that Executive Order 05-2026 is ultra vires and of no legal effect.

COUNT II

Declaratory Judgment—Procedurally Void

(Md. Code Ann., Land Use § 4-203; Frederick County Charter §§ 305-307; Frederick

County Code §§ 1-19-3.100.1, 1-19-3.100.3, 1-16-71)

(Against the County, Fitzwater in Her Official Capacity, and the Planning Commission)

136. Quantum incorporates by reference the allegations of the preceding paragraphs as if fully set forth here.

137. Even if the County Executive could enact zoning policy by executive order, the Order would remain invalid for a separate reason. Zoning enactments in Maryland follow a required process, and an enactment adopted without the Planning Commission recommendation, notice, and hearing that process requires is invalid. In *Baltimore County v. American Oil Co.*, the Court of Appeals voided a county moratorium on filling-station exceptions because the county adopted it without a planning-board recommendation and a public hearing. 245 Md. 719, 720-21, 229 A.2d 78, 78-79 (1967). Maryland courts continue to invalidate zoning actions taken without the process state law requires. *Cnty. Council of Prince George's Cnty. v. Robin Dale Land LLC*, 491 Md. 105, 160-61, 338 A.3d 675, 708-09 (2025).

138. The Frederick County Code prescribes the process for land-use decisions on preliminary plans. It requires the Planning and Permitting Division to present its recommendations at a regularly scheduled meeting of the Planning Commission, and it directs the Commission to approve, conditionally approve, or disapprove the plan at that meeting. Cnty. Code § 1-16-71(I)-(J). The Code therefore mandates access to, and engagement with, the Planning Commission.

139. The County Executive adopted Executive Order 05-2026 without that process. No Planning Commission recommendation preceded the Order, no notice preceded it, and no public hearing preceded it. The Order forecloses the application process the Council enacted and the

Code guarantees. An executive order that changes the zoning regime without the required process is invalid for that reason alone. *Am. Oil Co.*, 245 Md. at 721, 229 A.2d at 79.

140. Quantum is entitled to a declaration that Executive Order 05-2026 is void for failure to follow the process a zoning enactment requires.

COUNT III
Deprivation Of Procedural Due Process
42 U.S.C. § 1983 (U.S. Const. amend. XIV)
(Against the County, Fitzwater in Her Official and Individual Capacities, and the Planning Commission)

141. Quantum incorporates by reference the allegations of the preceding paragraphs as if fully set forth here.

142. Section 1983 supplies a damages remedy against any person who, under color of state law, deprives another of rights secured by the Constitution. 42 U.S.C. § 1983. Fitzwater acted under color of state law when she issued Executive Order 05-2026. Both Fitzwater and the County are “persons” subject to suit, and a local government is liable under § 1983 when the deprivation results from official action taken by one with final policymaking authority. *Monell v. Dep’t of Soc. Servs.*, 436 U.S. 658, 690-91 (1978); *Pembaur v. City of Cincinnati*, 475 U.S. 469, 480-82 (1986). Fitzwater’s conduct was executive, not legislative. She issued orders directing County staff to stop processing applications, withheld a specific applicant’s agreement from the Planning Commission, and directed staff to refuse a specific applicant’s filing. An official who assumes that non-legislative role enjoys no legislative immunity and may claim, at most, the qualified immunity available to executive officials. *Scott v. Greenville Cnty.*, 716 F.2d 1409, 1423 (4th Cir. 1983).

143. Fitzwater’s moratoria are county policy under every measure of federal law. “A policy or custom for which a municipality may be held liable can arise in four ways:” (1) through

an express policy; (2) through the decisions of a final policymaker; (3) through an omission, such as a failure to properly train; or (4) through a practice that is so “persistent and widespread” as to constitute a “custom or usage with the force of law.” *Lytle v. Doyle*, 326 F.3d 463, 471 (4th Cir. 2003) (citation omitted). By issuing the moratoria, Fitzwater created formal county rules that are intended to, and do, establish a fixed plan of action to be consistently followed. *See Howard v. City of Durham*, 68 F.4th 934, 952 (4th Cir. 2023) (defining “express policy” as “formal rules or understandings . . . that are intended to, and do, establish fixed plans of action to be followed under similar circumstances consistently and over time”). As the head of the executive branch of Frederick County, she has “final policymaking authority” and knows her moratoria will be followed. *Hunter v. Town of Mocksville, N.C.*, 897 F.3d 538, 553-56 (4th Cir. 2018). Because her employees staff the Planning Commission, she should have known they would enforce her moratoria, and she failed to train them to be independent. *Lytle*, 326 F.3d at 473-74 (liability may attach if officers are “not adequately trained in relation to the tasks the particular officers must perform”) (citation omitted). And her moratoria are so “persistent and widespread” that they are a “custom or usage with the force of law.” *Id.* at 471; *Owens v. Baltimore City State’s Att’y’s Off.*, 767 F.3d 379, 402 (4th Cir. 2014).

144. The Fourteenth Amendment forbids the deprivation of property without due process of law. A procedural-due-process claim requires a protected property interest, a deprivation of that interest, and the absence of the process due. *Tri Cnty. Paving, Inc. v. Ashe Cnty.*, 281 F.3d 430, 436 (4th Cir. 2002). A protected interest may lie in the right to invoke an adjudicatory procedure itself, independent of the ultimate permit the procedure may yield. *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 429-31 (1982) (recognizing a protected interest in the use of an adjudicatory process the State had established).

145. Quantum holds such an interest. The overlay authorizes data-center development on the Eastalco site, Quantum has proceeded under the County's approvals, and the County Code entitles Quantum to have the Planning Commission act on its Phase III preliminary plan at a public meeting. Cnty. Code § 1-16-71(I)-(J). The Order strips Quantum of that process.

146. A zoning action marked by fundamental procedural irregularity denies due process. In *Scott v. Greenville County*, the Fourth Circuit sustained a developer's due-process claim where a county withheld a building permit to which he was entitled and the delay destroyed his project, describing the deprivation as "the extraordinary and unlawful intervention of" government. 716 F.2d at 1419.

147. Executive Order 05-2026 is such an action. The County Executive issued the moratorium the day after the Supreme Court of Maryland ruled that data centers could be developed in the overlay zone. The Order applies to the narrow class of parties who prevailed in that litigation and closes the process the Code guarantees—without notice, hearing, or any Planning Commission recommendation. Fitzwater compounded the deprivation when she directed staff to refuse Quantum's application to amend its Letter of Understanding. The Order and those directives deprived Quantum of its protected interests without the process due.

148. As a direct and proximate result, Quantum has suffered damages, including the loss of a signed transaction and continuously accruing carrying costs, in an amount to be proven at trial, but no less than \$500 million.

COUNT IV
Deprivation Of Substantive Due Process
42 U.S.C. § 1983 (U.S. Const. amend. XIV)
(Against the County and Fitzwater in Her Official and Individual Capacities)

149. Quantum incorporates by reference the allegations of the preceding paragraphs as if fully set forth here.

150. Substantive due process forbids arbitrary government action that bears no rational relationship to a legitimate governmental purpose. *Sylvia Dev. Corp. v. Calvert Cnty.*, 48 F.3d 810, 827 (4th Cir. 1995). In the land-use context, a court asks whether the action is “arbitrary as it might be used in a constitutional sense,” *id.* at 825 (quotations omitted), considering whether it is tainted by procedural irregularity, targets a single party, and departs from regular practice. *MLC Auto., LLC v. Town of S. Pines*, 532 F.3d 269, 281 (4th Cir. 2008).

151. Executive Order 05-2026 meets that standard. It rests on a State study that halts nothing and requires nothing of the County. It imposes the delay the Council considered and rejected. It runs months past the study’s completion, tracking the electoral calendar rather than any administrative need. The overlay already addresses the health, safety, and welfare concerns the County Executive invokes, and its map is nearly identical to the one her own staff proposed. The Order’s stated rationale is pretextual, and its actual purpose—to suspend lawful development in response to political opposition ahead of an election—is not a legitimate exercise of the zoning power. Fitzwater has now confirmed that purpose in her own words: her campaign letter never mentions the State study, her newspaper interview ties the freeze to the June primary, and she told a real estate developer that she had to reject Quantum’s agreement to win the general election.

152. The County Executive’s own conduct confirms the arbitrariness. She championed the Data Center Enactments she now suspends, signed the bill she now refuses to execute, and continues to claim the revenue and community benefits the development generates even as she

forbids the development itself. Action this contradictory, aimed at this narrow a target, and untethered from any purpose the zoning power serves, exceeds the bounds of legitimate authority.

153. As a direct and proximate result, Quantum has suffered damages in amounts to be proven at trial.

COUNT V
Denial Of Equal Protection—Class Of One
42 U.S.C. § 1983 (U.S. Const. amend. XIV)
(Against the County and Fitzwater in Her Official and Individual Capacities)

154. Quantum incorporates by reference the allegations of the preceding paragraphs as if fully set forth here.

155. The Equal Protection Clause protects against intentional differential treatment that lacks any rational basis. A class-of-one plaintiff must show that the government treated it differently from others similarly situated and that no rational basis supported the difference. *Vill. of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000).

156. Quantum stands alone. Although others hold land within the overlay, Quantum is the only developer that has held an Adequate Public Facilities Ordinance Letter of Understanding since February 2023, obtained Planning Commission site-plan approvals, and broken ground. Construction on the Campus is already underway. No other party was positioned to submit the applications the Order blocks, and but for the Order, Quantum would be advancing its Phase III plan through the Planning Commission now. The Order singles out the one developer poised to build.

157. No rational basis supports that treatment. The County continues to accept and process land-use applications across every other category of development, halting only applications for the critical digital infrastructure the overlay authorizes—the very use the County

Executive opposes and the Data Center Enactments she signed permit. Singling out that use, and the one developer ready to pursue it, serves no legitimate purpose.

158. The circumstances supply evidence of intent. The County Executive knew Quantum was about to close a major transaction and to submit its Phase III plan when she issued the moratorium, and she issued it the day after the litigation cleared Quantum's path before extending it through the Order. Her reversal of the policy she had built, the procedural irregularity of the Order, and its timing show that she acted against Quantum "because of," not merely "in spite of," the effect on the development she opposed. *See Wayte v. United States*, 470 U.S. 598, 610 (1985) (discriminatory purpose requires selecting a course of action at least in part because of its adverse effects on an identifiable group); *SAS Assocs. I, LLC v. City Council of Chesapeake*, 91 F.4th 715, 720-21 (4th Cir. 2024) (discriminatory purpose in a class-of-one claim may rest on ill will or a pattern of adverse treatment).

159. Fitzwater's own words confirm that she singled Quantum out. Days after rejecting Quantum's agreement, she boasted to voters that she had rejected "the Catellus application," described her decision as "bigger than one project," and linked the industry's backers to people who "do not care . . . about humanity as a whole." Official action taken to make an example of a disfavored party, and explained by animus rather than by any land-use standard, lacks a rational basis.

160. As a direct and proximate result, Quantum has suffered damages in amounts to be proven at trial.

COUNT VI
Violation Of The Right To Petition
42 U.S.C. § 1983 (U.S. Const. amend. I)
(Against the County and Fitzwater in Her Official and Individual Capacities)

161. Quantum incorporates by reference the allegations of the preceding paragraphs as if fully set forth here.

162. The First Amendment protects the right to petition the government for redress of grievances, and that right extends to all departments of government, including administrative agencies. *Cal. Motor Transp. Co. v. Trucking Unlimited*, 404 U.S. 508, 510 (1972) (the right to petition extends to “all departments of the Government,” including administrative agencies).

163. Submitting a land-use application to the County’s Division of Planning and Permitting is petitioning activity. Through its preliminary plan and related applications, Quantum seeks favorable action from a governmental body, invoking the adjudicatory process the County Code establishes.

164. Executive Order 05-2026 forecloses that petitioning. It does not merely decline to grant relief; it bars County staff from accepting or considering the applications at all, foreclosing Quantum’s access to the process the Code guarantees. The County Executive imposed that bar to maintain a policy the courts had rejected.

165. As a direct and proximate result, Quantum has suffered injury to its First Amendment rights and damages in amounts to be proven at trial.

COUNT VII
Violation Of Article 24 Of The Maryland Declaration Of Rights (Due Process)
(Against the County and Fitzwater in Her Official and Individual Capacities)

166. Quantum incorporates by reference the allegations of the preceding paragraphs as if fully set forth here.

167. Article 24 of the Maryland Declaration of Rights guarantees due process of law and is the state analogue to the Fourteenth Amendment. The Maryland Declaration of Rights supplies a damages remedy for a state constitutional tort, and no governmental immunity bars that remedy against either local officials or local entities. *Rovin v. State*, 488 Md. 144, 188, 321 A.3d 201, 226-27 (2024); *DiPino v. Davis*, 354 Md. 18, 50-51, 729 A.2d 354, 371 (1999).

168. For the reasons alleged in Counts III and IV, Executive Order 05-2026 deprived Quantum of due process under Article 24. It deprived Quantum of a protected interest through arbitrary action unsupported by any legitimate purpose and without the process Maryland law guarantees.

169. Compensatory damages for a violation of Article 24 do not require a showing of malice. *Williams v. Prince George's Cnty.*, 112 Md. App. 526, 546-47, 685 A.2d 884, 894-95 (1996). Yet Fitzwater acted with actual malice. Under the Local Government Tort Claims Act, actual malice means “ill will or improper motivation.” Md. Code Ann., Cts. & Jud. Proc. § 5-301(b). As alleged above, Fitzwater suspended a law she knew she had no power to suspend, withheld an agreement the County Code required her to refer, and directed staff to refuse Quantum’s application, all to make an example of Quantum and win an election, while she told the public that the actions were just politics. An employee who acts with actual malice is “fully liable” for the resulting damages, and the Act’s limits on damages do not protect her. *Id.* §§ 5-302(b)(2)(i), 5-303(a). Quantum is entitled to compensatory damages against Fitzwater in her individual capacity.

170. As a direct and proximate result of the violation, Quantum has suffered damages in amounts to be proven at trial.

COUNT VIII

Violation Of Article 13 Of The Maryland Declaration Of Rights (Right to Petition) (Against the County and Fitzwater in Her Official and Individual Capacities)

171. Quantum incorporates by reference the allegations of the preceding paragraphs as if fully set forth here.

172. Article 13 of the Maryland Declaration of Rights secures “a right to petition the Legislature for the redress of grievances in a peaceable and orderly manner.” Md. Const. Decl. of Rts. art. 13. The provision speaks of “the Legislature,” and the land-use process Quantum invokes is an exercise of legislative authority the General Assembly has delegated to the County.

173. Frederick County is a creature of delegated power. Under Home Rule, a charter county possesses only the authority the Maryland Constitution and the General Assembly confer on it. Md. Const. art. XI-A. The County’s power to regulate land use is delegated state legislative power, and the County exercises it through the procedures the General Assembly prescribes in the Land Use Article. When Quantum petitions the County’s land-use bodies, it petitions an instrument of the State’s delegated legislative authority.

174. The Planning Commission is the state-required body at the center of that process. Maryland law requires the creation of a planning commission, fixes the terms of its members, and charges it with acting on plans and applications and advising the legislative body on land-use matters. *See* Md. Code Ann., Land Use §§ 2-101, 2-102, 3-203, 5-201. The Commission is independent: its members serve fixed terms and do not answer to the County Executive. *Id.* § 2-102. That the County’s planning staff sit within the executive budget does not place the Commission under the Executive’s control. The County Executive cannot exploit that structural accident to seal off the public’s access to an independent body the General Assembly designated to receive and decide these applications.

175. Executive Order 05-2026 does exactly that. By barring County staff from accepting or processing Quantum’s applications, the Order forecloses Quantum’s access to the Planning Commission and to the delegated legislative process the Land Use Article establishes, and it does so to maintain a policy the courts had rejected. The Maryland Declaration of Rights supplies a damages remedy for that violation without any qualified-immunity bar. *DiPino*, 354 Md. at 51, 729 A.2d at 371-72. As a direct and proximate result, Quantum has suffered damages in amounts to be proven at trial.

COUNT IX

Violation Of Article 9 Of The Maryland Declaration Of Rights (Suspension of Laws) (Against the County and Fitzwater in Her Official Capacity)

176. Quantum incorporates by reference the allegations of the preceding paragraphs as if fully set forth here.

177. Article 9 of the Maryland Declaration of Rights commands “[t]hat no power of suspending Laws or the execution of Laws, unless by, or derived from the Legislature, ought to be exercised, or allowed.” Md. Const. Decl. of Rts. art. 9. The power to suspend a law thus belongs to the legislature that made it, and to no one else. In Frederick County, that legislature is the County Council, in which the Charter vests all legislative power. Charter § 202.

178. Executive Order 05-2026 suspends the execution of a duly enacted law. By directing County staff to stop accepting, considering, and processing the applications the overlay authorizes, the Order halts the operation of Bill 25-09 and Ordinance 26-01-001 without any grant of authority from the Council. The County Executive is not the Legislature and did not act by or derive her authority from it; she acted against the Council’s judgment, imposing a freeze the Council had considered and declined to adopt. Article 9 forbids that result—the suspension of a law by an official other than the legislature that enacted it. *See Paula v. Mayor & City Council of*

Balt., 253 Md. App. 566, 590, 268 A.3d 972, 986 (2022) (Article 9 reaches “purported suspensions or executions of laws by some entity distinct from the Legislature”). Fitzwater has admitted the suspension’s purpose. She has explained that she froze data-center applications because of the June primary. Holding a duly enacted law in abeyance because of election concerns is the suspension of that law.

179. An actual controversy exists concerning the Order’s validity under Article 9. Quantum is entitled to a declaration that Executive Order 05-2026 unlawfully suspends the execution of the law and is void.

COUNT X

Tortious Interference With Business Relationships (Against the County and Fitzwater in Her Official and Individual Capacities)

180. Quantum incorporates by reference the allegations of the preceding paragraphs as if fully set forth here.

181. Maryland recognizes the tort of wrongful interference with business relationships in two forms: inducing the breach of an existing contract and, more broadly, maliciously or wrongfully interfering with another’s economic relationships. *Natural Design, Inc. v. Rouse Co.*, 302 Md. 47, 68-69, 485 A.2d 663, 673-74 (1984). The broader form requires intentional and willful acts, calculated to cause damage to the plaintiff in its lawful business, done with the unlawful purpose to cause that damage and without right or justifiable cause, and resulting damage. *Alexander & Alexander Inc. v. B. Dixon Evander & Assocs.*, 336 Md. 635, 652, 650 A.2d 260, 268-69 (1994).

182. The interference must be independently wrongful, apart from its effect on the plaintiff’s business relationships. *Id.* at 657, 650 A.2d at 271. Courts across the country have recognized that a government body commits the tort when it blocks a lawful development through

the wrongful exercise of its regulatory power. *See Pleas v. City of Seattle*, 112 Wash. 2d 794, 804-08, 774 P.2d 1158 (1989) (city liable for interference where officials refused to process a developer's permits to gain political favor); *Iowa Coal Mining Co. v. Monroe County*, 555 N.W.2d 418, 437 (Iowa 1996) (interference with a prospective contract is a recognizable tort against a governmental subdivision); *Executive 100, Inc. v. Martin County*, 922 F.2d 1536, 1542 (11th Cir. 1991) (developer stated a claim against a county that blocked its project and told potential purchasers the property could not be developed).

183. Quantum held business relationships with third parties who intended to lease, purchase, and develop capacity on the Campus, including a signed transaction valued at more than \$500 million. The County Executive intentionally interfered with those relationships. The County Executive knew of those relationships. She issued the Order with knowledge that Quantum's transaction was about to close in order to halt the development on which the relationships depend, directing staff to refuse the applications the overlay authorizes, and she did so the day after the courts cleared Quantum's path and with knowledge that Quantum was about to submit its Phase III plan and close its transaction. Quantum told Fitzwater in July 2026 that the moratorium placed a pending transaction at risk. She then accepted the community-benefits package, which allowed the transaction to move forward, and destroyed the transaction when she repudiated that agreement to improve her prospects in the general election.

184. The interference was wrongful independent of its effect on Quantum's relationships. As alleged in Count I, the Order exceeds the County Executive's authority and suspends a duly enacted law in violation of the Maryland Constitution and the Frederick County Charter. Interference accomplished through an ultra vires order that suspends the law is interference without right or justifiable cause. Fitzwater's other acts were independently wrongful

as well. Her directive that staff refuse Quantum's application rested on the same void moratorium. And her request that the State Rural Legacy Board table the County's application sought to override the Council's enacted decision, a power the Charter does not give her.

185. The interference caused Quantum harm. The signed transaction did not close, additional transactions and commitments remain at risk, and carrying costs accrue each day the Order remains in force. No privilege or justification excuses the interference. A County Executive has no legitimate interest in enforcing an order beyond her authority, and the wrongful exercise of regulatory power to block a lawful development is not privileged conduct. *See Pleas*, 112 Wash. 2d at 806-08.

186. As a direct and proximate result, Quantum has suffered damages in an amount to be proven at trial. The County Executive acted with actual malice—with knowledge that the Order exceeded her authority and with the purpose of injuring Quantum's development for political advantage. Because Fitzwater acted with actual malice, she is fully liable for those damages, and the limits of the Local Government Tort Claims Act do not apply to her. Md. Code Ann., Cts. & Jud. Proc. § 5-302(b)(2)(i).

COUNT XI

Unconstitutional Conditions On Land-Use Approval

42 U.S.C. § 1983 (U.S. Const. amends. I, V, XIV)

(Against the County and Fitzwater in Her Official and Individual Capacities)

187. Quantum incorporates by reference the allegations of the preceding paragraphs as if fully set forth here.

188. The government may not condition a land-use approval on the surrender of a constitutional right, including the right to just compensation for property. The demand for property or money as a condition of a permit must share an essential nexus and rough proportionality with

the effects of the proposed use. *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595, 605-06 (2013); *Nollan v. California Coastal Comm'n*, 483 U.S. 825 (1987); *Dolan v. City of Tigard*, 512 U.S. 374 (1994). The analysis does not change regardless of whether the government approves a permit on the condition that the applicant turn over property, or denies a permit because the applicant refuses to do so. *Koontz*, 570 U.S. at 606; *Dabbs v. Anne Arundel County*, 458 Md. 331, 350, 182 A.3d 798, 809 (2018).

189. The community-benefits process is a legitimate one, and the County Executive had no obligation to enter it. Maryland law authorizes a development-rights-and-responsibilities agreement, and the Frederick County Code establishes the process for negotiating one. Cnty. Code §§ 1-25-1 to 1-25-6. Such an agreement is appropriate where a developer offers consideration in return for a future right—a vested entitlement, an extended approval term, or a commitment the County is not otherwise bound to give. It is not a device for requiring a developer to pay for a right it already holds. A county executive may decline to negotiate such an agreement, and Quantum does not contend otherwise. But the County Executive did not use that process here. She used the community-benefits arrangement to impose a condition the Constitution forbids—the surrender of Quantum’s right to develop under laws the Council had enacted—and the sequence of her conduct shows it.

190. The injury is complete when the government imposes the condition. Once the government conditions the grant of a land-use approval on the surrender of a landowner’s rights, the claim becomes cognizable, whether or not the applicant pays the exaction or abandons the project. *Epcon Homestead, LLC v. Town of Chapel Hill*, 62 F.4th 882, 887 (4th Cir. 2023); see *Knick v. Township of Scott*, 588 U.S. 180, 185 (2019). Section 1983 supplies a damages remedy against the County and against the County Executive, who exercised final policymaking authority

when she imposed the condition and issued the Order. *Monell*, 436 U.S. at 690-91; *Pembaur*, 475 U.S. at 480-81.

191. Three facts confirm that the demand was a condition rather than a negotiation. First, the County Executive froze development the same day she reopened negotiations, so the freeze and the demand arrived together: Quantum could regain access to the process the Code guarantees only by paying. Second, upon information and belief, the County Executive engaged no other developer with an offer to lift the moratorium in exchange for substantial funds, so the demand fell on Quantum alone. Third, the County Executive's September 14 letter conceded that Quantum's proposal "would have met critical needs in Adamstown," yet rejected it because "the cost of those benefits would have been too great for our community." The enacted overlay and Quantum's permits had already addressed the development's impact on the community, and Quantum owed no duty beyond satisfying the requirements the zoning ordinance imposes through a fair process. By rejecting admittedly needed benefits on a ground that had nothing to do with any impact of Quantum's use, the County Executive confirmed that the process was never about mitigating impacts—it was about what Quantum would pay, and what the politics of the moment would allow, before she would let Quantum exercise rights it already held.

192. The condition satisfies neither nexus nor proportionality. The overlay already regulates the light, sound, vibration, setbacks, and location of data-center development, and it resolves the health, safety, and welfare concerns the County Executive invokes. The community-benefits demand addressed no impact of Quantum's proposed use that the overlay left unaddressed; it extracted value the County wished to obtain while the Order blocked the development that would produce it. Fitzwater's campaign letter confirms the absence of any nexus: the industry should pay, she wrote, "because, frankly, we know they can afford it." A landowner's ability to pay is

not a nexus. The demand was imposed ad hoc, on Quantum's specific parcels and through the County Executive's discretionary action, not by legislation of general application. *Cf. Dabbs*, 458 Md. at 353, 182 A.3d at 811 (area-wide impact fees fixed by legislation are not subject to nexus and proportionality review).

193. The County Executive's demands also reached Quantum's speech. She asked Quantum's Executive Vice President to agree to testify in favor of increased taxes on data centers as a condition of the County's approvals. The government "may not deny a benefit to a person on a basis that infringes his constitutionally protected interests—especially, his interest in freedom of speech." *Perry v. Sindermann*, 408 U.S. 593, 597 (1972). Conditioning land-use approvals on a landowner's agreement to advocate for the government's preferred tax legislation is the kind of condition the First Amendment forbids.

194. As a direct and proximate result, Quantum has suffered damages in an amount to be proven at trial.

COMPLIANCE WITH THE LOCAL GOVERNMENT TORT CLAIMS ACT

195. Quantum delivered its notice to the County Attorney by the method the statute prescribes. On September 19, 2026, Quantum, through counsel, sent a written notice of claim to Bryon Black, County Attorney for Frederick County, at the Office of the County Attorney, Winchester Hall, 12 East Church Street, Frederick, Maryland 21701, by certified mail, return receipt requested, bearing a postmark from the United States Postal Service. The Office of the County Attorney received the notice on September 22, 2026.

196. On October 8, 2026, Quantum, through counsel, delivered a supplemental notice of claims to Bryon Black, County Attorney for Frederick County, at the Office of the County Attorney, Winchester Hall, 12 East Church Street, Frederick, Maryland 21701. Quantum has satisfied the notice requirement of the Local Government Tort Claims Act ("LGTC"), Md. Code Ann., Cts. & Jud. Proc. § 5-301 et seq.

PRAYER FOR RELIEF

WHEREFORE, Quantum respectfully requests that the Court enter judgment in its favor and against Defendants and grant the following relief:

- (a) A declaration that Executive Order 05-2026 is unlawful, ultra vires, and void, and of no legal effect, and a declaration that the County, Fitzwater, and the Planning Commission are prohibited from enforcing Executive Order 05-2026, or any successor executive order or directive;
- (b) A temporary restraining order and preliminary and permanent injunctive relief enjoining Defendants, and each of their officers, employees, agents, and all persons acting in concert with them, from enforcing Executive Order 05-2026, and restoring

Quantum's access to the County's land-use and permitting process, including review of the preliminary plan for the Phase III Parcel;

- (c) Compensatory damages against the County and Fitzwater in an amount in excess of \$75,000, to be proven at trial, including the value of transactions lost as a result of the Order and the carrying costs that accrue for so long as the Order remains in effect;
- (d) Quantum's reasonable attorneys' fees and costs under 42 U.S.C. § 1988 and any other applicable provision of law;
- (e) Pre-judgment and post-judgment interest at the maximum rate allowed by law; and
- (f) Such other and further relief as the Court deems just and proper.

Date: October 8, 2026

Respectfully submitted,

LONGMAN & VAN GRACK, LLC

/s/ Theodore B. Kiviat

Theodore B. Kiviat, Esq. (CPF# 0101110004)

/s/ Sean C. Griffin

Sean C. Griffin, Esq. (CPF# 9312140299)

/s/ Adam L. Van Grack

Adam L. Van Grack, Esq. (CPF# 0212190262)

10411 Motor City Drive, Suite 750

Bethesda, Maryland 20817

Telephone: (301) 291-5027

Fax: (301) 291-5028

avangrack@lvglawfirm.com

tkiviat@lvglawfirm.com

sean@lvglawfirm.com

QUINN EMANUEL URQUHART & SULLIVAN, LLP

Keith H. Forst

(Motion for Special Admission Pending)

555 13th Street NW, Suite 600

Washington, D.C. 20004

Telephone: (202) 538-8000

keithforst@quinnemanuel.com

Asher B. Griffin

(Motion for Special Admission Pending)

300 West 6th St, Suite 2010

Austin, TX 78701

Telephone: (737) 667-6103

ashergriffin@quinnemanuel.com

Justin C. Griffin

(Motion for Special Admission Pending)

865 S Figueroa St, 10th Floor

Los Angeles, CA 90017

Telephone: (213) 443-3000

justingriffin@quinnemanuel.com

Counsel for Plaintiff Quantum Maryland, LLC

