

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF IMPERIAL

CITY OF IMPERIAL,

Petitioner,

vs.

COUNTY OF IMPERIAL, ET. AL.,

Respondents.

Case No.: ECU004457

TENTATIVE DECISION
(CRC 3.1590(h))

I. INTRODUCTION

The petitions for writ of mandate came on for trial on July 29, 2026, in Dept. 9, the Hon. L. Brooks Anderholt presiding. Alene M. Taber appeared for Petitioner City of Imperial (City). Josh Chatten-Brown and Kathryn Pettit appeared for Intervening Petitioner Sierra Club. Nathan George appeared for Respondents County of Imperial (County) and Imperial County Board of Supervisors (BOS). Sebastian Rucci appeared for Real Party in Interest Imperial Valley Computer Manufacturing, LLC (IVCM).

The Court considered the operative petitions and supplemental pleadings, the parties' opening, opposition, and reply briefs, the administrative and supplemental administrative records, the stipulated facts, the requests for judicial notice, the evidentiary objections, and the arguments presented at the hearing.

1 The petitions seek traditional and administrative mandate under Code of Civil Procedure
2 (CCP) §§ 1085 and 1094.5, depending on the challenged County action. The grading related
3 claims proceed under traditional mandate, while the lot-merger challenge invokes administrative
4 mandate. The petitions also request determination under the corresponding CEQA review
5 provisions in Public Resources Code (PRC) §§ 21168 and 21168.5.

6 The petitions challenge the County's treatment of a proposed artificial intelligence data
7 center (Project) and supporting facilities as a ministerial, by-right development exempt from the
8 California Environmental Quality Act (CEQA). The principal issue is whether the County could
9 treat this Project, given its scale, components, and related approvals, as exempt from CEQA
10 without further environmental review.

11 CEQA follows a staged, three-tiered process. The agency first determines whether the
12 activity is subject to CEQA and whether an exemption applies. If no exemption applies, the
13 agency conducts an initial study and determines whether a negative declaration or mitigated
14 negative declaration is sufficient. If substantial evidence supports a fair argument that the project
15 may cause a significant environmental effect, an environmental impact report (EIR) is required.
16 (*Muzzy Ranch Co. v. Solano County Airport Land Use Com.* (2007) 41 Cal.4th 372, 380–381;
17 *Union of Medical Marijuana Patients, Inc. v. City of San Diego* (2019) 7 Cal.5th 1171, 1185–
18 1187; PRC §§ 21080, 21151; CEQA Guidelines, §§ 15061, 15063, 15064, 15070).

19 Applying that framework, the Court concludes the County could not cease review at the
20 first (ministerial exemption) stage. The 2017 zoning amendment added data centers as a
21 permitted use in the M-1 and M-2 zones. This decision does not invalidate that ordinance.
22 However, zoning alone does not establish that every later data center development is ministerial
23 for CEQA purposes. The Project requires project specific governmental decisions and includes
24 components and infrastructure materially more detailed than the generalized land use amendment
25 considered in 2017.

26 Accordingly, the Court issues the following tentative decision pursuant to Rule of Court
27 3.1590.

28 ///

II. BACKGROUND

A. The 2016-2017 Title 9 Amendments

In 2016, the County issued notices of intent to prepare a negative declaration for proposed amendments to Title 9 of the Imperial County Code. The notices described the proposed amendments as "minor additions, revisions, corrections, and changes for clarification" to the County's Land Use Ordinance. (AR23, 31). The administrative record contains an Environmental Evaluation Committee determination and negative declaration materials concluding that the proposed code updates would not cause significant environmental effects. (AR873, 883-912).

The available staff materials did not separately analyze adding data centers as a permitted use. The Environmental Evaluation Committee materials do not discuss data centers, and the Planning Commission report describes the amendments generally. (AR872-874, 883-912). The term appears in the redlined ordinance language. (AR254-256, 262-263, 705-706, 712). A BOS memorandum identified other changes but not data centers as a major change. (AR34). The Initial Study contained only one page devoted to land use and planning. (AR000904-05).

On April 18, 2017, the BOS considered the Title 9 amendments. Respondents rely on record materials stating that the BOS adopted a negative declaration and amended the industrial zoning provisions to add data centers as permitted uses in the M-1 and M-2 zones. (AR35, 45-47, 705-706, 712, 883-912; SAR13138). Respondents also rely on notices transmitted to the State Clearinghouse and local agencies. (AR914-922). No timely action challenging the validity of the 2017 zoning amendment or its CEQA review was made.

The parties stipulated that the County could not locate signed or executed BOS resolutions adopting the negative declaration and findings, the executed ordinance, or public-hearing notices for April 18, 2017. It also could not locate documents supporting the Planning Director's later statement that the County compared data centers with other by-right uses. (Stip. Facts Nos. 2-3). The stipulation does not invalidate the codified ordinance, but it bears on what environmental analysis occurred in 2017 and its effect nine years later.

///

1 **B. The Project**

2 In July 2025, IVCN submitted development materials and sought County review for a
3 data center campus at the southeast corner of Aten and Clark Roads. (AR2535-2552;
4 SAR13140). The site consists of approximately 75 acres divided between five parcels and
5 Leimgruber Road. The parcels include M-1-U, M-2-U, and A-2-U zoning classifications.
6 (AR2050; SAR4992-4993).

7 The plans identify an approximately 950,000-square-foot data center building with a
8 proposed 330-megawatt load; a 16-acre, 330-megawatt substation; an 862-megawatt-hour BESS;
9 cooling and water-treatment facilities; a six-acre retention basin; four 500,000-gallon water
10 tanks; Imperial Irrigation District (IID) transmission interconnections; and, initially, a 330-
11 megawatt emergency-generator facility with 132 natural-gas generators. (AR2050; SAR14441).

12 **C. Grading, Lot Merger, Road Vacation, and Related County Actions**

13 On September 4, 2025, County Planning staff issued a determination letter stating that a
14 data center was a permitted use in the M-1 zone and that ancillary components identified in the
15 plans were also permitted uses. (AR2554-2555). Planning staff also determined that the Project
16 crossed multiple parcels and zones and that IVCN would need to revise the layout or merge the
17 lots before grading could proceed. (AR2554-2555, 2564).

18 IVCN submitted a lot merger application on October 3, 2025. (SAR4925-4935). It also
19 submitted a grading permit application on October 21, 2025, for earthwork to construct a data
20 center and accessory uses, including a substation, battery backup, and generator backup.
21 (AR2218). On November 3, 2025, the County issued a Notice of Exemption (NOE) for Grading
22 Permit BP No. 63316, relying on the statutory exemption for ministerial projects under PRC §
23 21080(b)(1), and Guidelines § 15268. The County filed the notice on November 6, 2025. (AR1-
24 2; SAR4894).

25 The lot merger proceeded with the Planning Commission on December 18, 2025. The
26 Commission received several hours of testimony. A motion to approve failed, and it instead
27 directed further discussion with the City of Imperial, the City of El Centro, and the community
28 before the matter returned. (SAR5401; see SAR5915-6006). The record also reflects

1 requirements or proposed conditions concerning common ownership, easement relocation,
2 abandonment of Leimgruber Road, water and sewer systems, and Clark Road dedication.

3 On April 7, 2026, the BOS considered Lot Merger No. 00191 and Appeals Nos. 25-0004
4 and 25-0005. (SAR4969-4977). Respondents state that the BOS adopted Resolution No. 2026-
5 057, approved Appeal No. 25-0004, denied Appeal No. 25-0005, and approved the lot merger
6 subject to conditions requiring, among other things, common ownership, relocation or removal
7 of easements, and abandonment of Leimgruber Road before recordation. (SAR4896-4898, 5002-
8 5003, 5915-6006). The BOS also approved Resolution No. 2026-056 concerning vacation of the
9 Leimgruber Road right-of-way. (SAR4899-4900, 4978-4990). A NOE for the lot merger and
10 road vacation was filed on April 8, 2026. (SAR4894).

11 **D. Motion for Judgment on the Pleadings and Intervention**

12 The County filed a Motion for Judgment on the Pleadings on the City's First Amended
13 Petition which the Court granted with leave to amend.

14 The County then moved for judgment on the pleadings as to the City's Second Amended
15 Petition. The Court heard the motion on April 29, 2026. The petition alleged ten causes of action
16 involving the grading application approval, CEQA, the lot merger, zoning, and injunctive relief.

17 At the April 29 hearing, the Court noted that the County had determined the grading
18 matter was exempt from CEQA and had filed a NOE, although the grading permit had been
19 approved rather than issued and conditions remained before issuance. The Court further noted
20 that the NOE did not state facts supporting the exemption. It denied the motion, authorized
21 supplemental pleading concerning the lot merger, and directed the County to lodge the
22 administrative record for merits review at the trial on the writ.

23 Sierra Club moved for leave to intervene. On May 28, 2026, the Court granted
24 intervention after noting that Sierra Club's proposed petition substantially overlapped with the
25 City's claims and Sierra Club's separately filed petition in Case No. ECU004734. The Court
26 reassigned that case to itself and stayed it, found the consolidation request moot, and reset this
27 writ hearing to July 29, 2026.

28 ///

1 **E. The Parties' Positions and Requested Relief**

2 Petitioners contend the County divided one integrated development into separate
3 ministerial approvals. They argue the grading provisions permit project specific judgment, the
4 merger and road vacation involved discretion, and other necessary approvals are not limited to
5 fixed standards. They also contend the 2017 negative declaration addressed a general zoning
6 amendment, not this Project's site-specific effects.

7 Respondents contend that the 2017 zoning amendment permits data centers by right and
8 supporting uses in the industrial zones and each challenged approval applies fixed standards.
9 They contend the 2017 amendment is final and that because the current actions are ministerial,
10 the Court never reaches environmental effects or the fair-argument standard.

11 The City seeks to set aside the grading application approval and its NOE, the lot merger
12 and related appeals, the lot-merger CEQA determination and its NOE, and related resolutions. It
13 also seeks an order for an Environmental Impact Report (EIR) before further Project permitting
14 or physical development. Sierra Club seeks substantially similar CEQA relief for the whole
15 Project.

16 **III. GOVERNING LAW**

17 **A. Mandamus and Standard of Review**

18 The grading related CEQA claims are reviewed under traditional mandate and PRC §
19 21168.5. A writ under CCP § 1085 may compel an agency to perform a legal duty and may
20 correct action that is arbitrary, capricious, entirely lacking in evidentiary support, or contrary to
21 law. (*Common Cause v. Board of Supervisors* (1989) 49 Cal.3d 432, 442; *Citizens for Amending*
22 *Proposition L v. City of Pomona* (2018) 28 Cal.App.5th 1159, 1186).

23 For CEQA purposes, § 21168.5 limits the Court's inquiry to whether the agency
24 prejudicially abused its discretion. An agency abuses its discretion if it fails to proceed in the
25 manner required by law or if its decision is not supported by substantial evidence. Procedural
26 compliance is reviewed independently; factual determinations receive the deference required by
27 the substantial-evidence standard. (*Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 512;

1 *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40
2 Cal.4th 412, 435-436).

3 The lot merger claims are reviewed under administrative mandate under CCP § 1094.5
4 and PRC § 21168. The Court reviews the administrative record to determine, among other
5 things, whether the agency's decision was supported by substantial evidence, proceeded
6 according to law or whether there was an abuse of discretion.

7 **B. CEQA Uses a Three-Tiered Review Process**

8 California (CA) cases describe CEQA review as a three-tiered sequence. The first tier is
9 preliminary: identify the activity, decide whether CEQA applies, and determine whether an
10 exemption ends review. If the project is not exempt, the agency proceeds to an initial study and
11 the negative-declaration/EIR choice. If the record supports a fair argument of a significant
12 environmental effect, the agency must prepare an EIR. (*Muzzy Ranch*, supra, 41 Cal.4th at pp.
13 380-381; *Union of Medical Marijuana Patients*, supra, 7 Cal.5th at pp. 1185-1187; *Lucas v. City*
14 *of Pomona* (2023) 92 Cal.App.5th 508, 533-535).

15 **1. Tier One: Preliminary Review and Exemptions**

16 At the first tier, the agency identifies the activity subject to review and asks whether
17 CEQA applies at all. CEQA generally applies to discretionary projects proposed to be carried out
18 or approved by public agencies. (PRC, § 21080(a)). It does not apply to ministerial projects. (Id.,
19 subd. (b)(1); Guidelines, § 15268). Other statutory and categorical exemptions may also apply. If
20 an exemption controls, the agency ordinarily may proceed without preparing an initial study,
21 negative declaration, or EIR. (*Union of Medical Marijuana Patients*, supra, 7 Cal.5th at pp.
22 1185-1186).

23 **2. Tier Two: Initial Study and Negative Declaration**

24 If no exemption applies, the agency proceeds to the second tier and conducts an initial
25 study. The initial study serves several purposes, including determining whether the project may
26 have a significant environmental effect and informing the choice between a negative declaration
27 or an EIR. (Guidelines, § 15063). A negative declaration is appropriate only when there is no
28

1 substantial evidence, considering the whole record, that the project may have a significant effect
2 on the environment. (PRC, § 21080(c); Guidelines, § 15070).

3 **3. Tier Three: Environmental Impact Report**

4 If substantial evidence supports a fair argument that the project may cause a significant
5 environmental effect, the agency reaches the EIR stage. (PRC, § 21080(d); Guidelines, §
6 15064(f)(1); *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75, 83). The Court
7 independently determines whether the record supports a fair argument; evidence supporting a
8 potentially significant effect cannot be defeated merely because the record also contains contrary
9 evidence. (*No Oil*, supra, 13 Cal.3d at pp. 75, 83).

10 **C. Ministerial and Discretionary Decisions**

11 A ministerial decision applies fixed standards or objective measurements with little or no
12 personal judgment; a discretionary decision requires judgment concerning whether or how to
13 approve the activity. (Guidelines, §§ 15357, 15369). The Supreme Court has emphasized that
14 CEQA relevant discretion means authority that allows the agency to respond to environmental
15 concerns by shaping the project. Judgment is not enough if the agency can only verify fixed
16 technical criteria. Conversely, a permit is not ministerial merely because the underlying use is
17 allowed if the agency can impose environmentally meaningful conditions or otherwise modify
18 how the project proceeds. (*Protecting Our Water & Environmental Resources v. County of*
19 *Stanislaus* (2020) 10 Cal.5th 479, 493-496; *Friends of Westwood, Inc. v. City of Los Angeles*
20 (1987) 191 Cal.App.3d 259, 267-270).

21 The cases Respondents rely on illustrate the distinction. *McCorkle Eastside*
22 *Neighborhood Group v. City of St. Helena* (2018) 31 Cal.App.5th 80, 91-95, treated design
23 review as ministerial for CEQA purposes because the agency's authority was limited to design
24 and did not allow it to address environmental effects. *Madrigal v. City of Huntington Beach*
25 (2007) 147 Cal.App.4th 1375, 1384-1386, upheld a later grading permit where the grading
26 conformed to the detailed standards of a previously approved CUP and the City did not exercise
27 new project-shaping discretion. *Health First v. March Joint Powers Authority* (2009) 174
28 Cal.App.4th 1135 likewise involved fixed standards. None of these cases establishes that every

1 use permitted by zoning is ministerial. The inquiry remains whether governing law gives the
2 agency authority to shape the project in response to environmental concerns.

3 **D. CEQA Reviews the Whole of the Action**

4 Before classifying individual permits, the agency must identify the CEQA project.
5 Guidelines § 15378 defines a project as the whole of an action that may result in a direct or
6 reasonably foreseeable indirect physical change in the environment. Agencies may not divide
7 one integrated development into smaller pieces to avoid environmental review. (*Laurel Heights*
8 *Improvement Assn. v. Regents of University of CA* (1988) 47 Cal.3d 376, 396-398; *Tuolumne*
9 *County Citizens for Responsible Growth, Inc. v. City of Sonoma* (2007) 155 Cal.App.4th 1214,
10 1223-1231).

11 Where a single project involves both ministerial and discretionary approvals, Guidelines
12 § 1526(d) directs that the project be treated as discretionary. The agency cannot establish a
13 blanket ministerial exemption merely by showing that some individual permits use objective
14 criteria. If at least one necessary approval gives the agency authority to shape the project in
15 response to environmental concerns, CEQA applies to the whole project.

16 **E. Prior Environmental Review Does Not Expand Beyond Its Scope**

17 CEQA also governs reliance on earlier environmental review. PRC § 21166 and
18 Guidelines § 15162 address when a later proposal may rely on a prior EIR or negative
19 declaration and when project changes, changed circumstances, or new information require
20 additional review. A separate streamlining rule, Guidelines § 15183, applies to qualifying projects
21 consistent with zoning or a plan for which an EIR was certified. In *Wal-Mart Stores, Inc. v. City*
22 *of Turlock* (2006) 138 Cal.App.4th 273, 286-288, *Lucas*, supra, 92 Cal.App.5th at pp. 533-546,
23 and *Hilltop Group, Inc. v. County of San Diego* (2024) 99 Cal.App.5th 890, 907-911, each case
24 depended on a prior certified EIR and an inquiry into whether later project specific effects had
25 already been addressed. These cases do not make a prior negative declaration or a by-right
26 zoning designation a blanket exemption for later development.

27 ///

28 ///

IV. REQUESTS FOR JUDICIAL NOTICE

Evidence Code § 452 permits judicial notice of legislative enactments, official acts, court records, and facts not reasonably subject to dispute. Section 453 makes notice mandatory only when the matter qualifies under § 452, is relevant, and the requesting party supplies sufficient information. Judicial notice of a document does not establish the truth of disputed factual assertions contained in it. (*Mangini v. R.J. Reynolds Tobacco Co.* (1994) 7 Cal.4th 1057, 1063).

A. City of Imperial

The City requests notice of County environmental documents for five prior BESS projects and materials concerning the proposed July 2026 data-center moratorium. The Court takes notice of Exhibits 1 through 5 as official County records and for what they reflect on their face, but not as proof of a binding County practice, factual identity with this Project, or the truth of their environmental conclusions.

As to Exhibit 6, the Court takes notice of the existence and contents of the agenda materials and proposed ordinance. The Court does not take notice that an unsigned proposed ordinance was formally adopted, nor does it accept disputed proposed findings for their truth.

B. Sierra Club

Sierra Club requests notice of a Project-related webpage, the City's environmental-justice report, state electricity data, and IVCN's separate writ petition against IID. The Court denies substantive use of the first three because Sierra Club has not shown they were before the County when it acted, and some postdate the decisions. The Court notices the separate petition only as to its filing, parties, claims, and requested relief, not the truth of its allegations.

C. Respondents and Real Parties

Respondents and Real Parties request notice of May 2026 DTSC correspondence, an April 24, 2026, economic-impact report, and revised May 2026 Project plans. These materials postdate the November 2025 grading action; the DTSC correspondence and revised plans also postdate the April 7, 2026, merger and road-vacation decisions. They could not have supported those earlier decisions. (*Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559,

573-579). The Court recognizes their existence and dates but denies substantive use to support the earlier approvals.

V. DISCUSSION

A. The Present Case Does Not Require the Court to Invalidate the 2017 Ordinance

Respondents argue any challenge to the 2017 negative declaration or ordinance is barred by CEQA's limitations periods and the Planning and Zoning Law. (PRC, § 21167; Gov. Code, § 65009). The Court agrees this proceeding is not a vehicle to invalidate the 2017 ordinance nine years later. The Court therefore treats the codified M-1 and M-2 provisions permitting 'data centers' as operative.¹ That means a discretionary use permit is not required merely because the principal use is a data center. It does not establish that every approval needed for this Project is ministerial or that project level environmental review occurred in 2017.

B. The 2017 Negative Declaration Did Not Prospectively Complete CEQA Review for This Project

The 2017 negative declaration does not fail merely because no EIR preceded it. After an initial study, CEQA permits a negative declaration when the record contains no substantial evidence that the project may have a significant environmental effect. (PRC, § 21080(c); Guidelines, §§ 15063, 15070; *Union of Medical Marijuana Patients*, supra, 7 Cal.5th at pp. 1186-1187). The issue here is scope. The available 2017 materials described minor code revisions. They did not separately analyze data centers, BESS facilities, a 330-megawatt substation, large-scale natural-gas generation, high-capacity transmission interconnections, cooling infrastructure, water-treatment facilities, or a development approaching one million square feet. (AR23, 34, 872-874, 883-912).

The later statement that the County compared data centers with other by-right uses does not suffice because the parties stipulated that supporting documents could not be located. Nor

¹ The Court assumes for purposes of this proceeding that the 2017 ordinance adding "data centers" as permitted uses in the M-1 and M-2 zones was validly adopted and remains operative. The Court does not adjudicate the adequacy of the 2017 CEQA process or invalidate the ordinance. The narrower question is whether that land-use approval and its negative declaration established project-specific CEQA review for the materially more detailed Project presented to the County in 2025 and 2026.

1 does later reenactment show that this Project's environmental effects were studied. The record
2 supports finality of the land-use rule, not a finding that this Project was environmentally
3 approved in 2017.

4 The cases addressing prior plan level review reinforce that distinction. *Wal-Mart* upheld
5 § 15183 streamlining because a certified general plan EIR covered the zoning amendment, while
6 recognizing that detailed analysis tied to later development could await those later activities.
7 (*Wal-Mart Stores*, supra, 138 Cal.App.4th at pp. 279, 286-291). *Lucas* and *Hilltop* likewise
8 involved prior certified EIRs and current findings comparing the later activity with that earlier
9 analysis. (*Lucas*, supra, 92 Cal.App.5th at pp. 533-546; *Hilltop Group*, supra, 99 Cal.App.5th at
10 pp. 907-911). Here, the County did not invoke Guidelines § 15183 or compare this Project with a
11 prior certified EIR. Nor did it invoke the subsequent-review framework of PRC § 21166 and
12 Guidelines § 15162. The November 2025 NOE instead relied on the ministerial exemption.²

13 **C. The CEQA Project Is the Integrated Data Center Development, Not Each Permit**
14 **in Isolation**

15 The grading, lot merger, road vacation, electrical facilities, water systems, and related
16 infrastructure serve one objective: construction and operation of the data center campus. The
17 grading application covers the data center, substation, battery backup, and generator backup.
18 (AR2218). The merger accommodates the data center, and the road vacation removes a roadway
19 bisecting the unified site. (AR3904; SAR4925-4935, 4979-4990).

20 Combining ministerial permits does not by itself create discretion. But Guidelines §
21 15268(d) provides that when one project requires both ministerial and discretionary approvals,
22 CEQA applies to the whole project. The Court need not find every permit independently
23

24
25 ² The Court does not find that the 2017 negative declaration necessarily lacks all informational value for future
26 CEQA review. Whether an earlier environmental document retains informational value despite changed plans or
27 circumstances is ordinarily a predominantly factual question for the agency in the first instance. (*Friends of College*
28 *of San Mateo Gardens v. San Mateo County Community College Dist.* (2016) 1 Cal.5th 937, 952-953.) Here,
however, the County did not invoke § 21166 or Guidelines § 15162 in the challenged exemption determination or
undertake the comparison contemplated by those provisions. The Court therefore holds only that the 2017 negative
declaration does not independently sustain the County's ministerial exemption determination for the Project.

1 discretionary. One necessary approval with environmentally meaningful project shaping
2 authority is enough.

3 **D. The Grading Approval Is Not Purely Ministerial on This Record**

4 The County relies principally on Imperial County Code §§ 91011.01 through 91011.03.
5 Respondents characterize § 91011.02 as containing four objective standards concerning
6 agricultural use, irrigation, the water table, and protection of adjacent land. They argue that once
7 those standards are satisfied, the County must approve the grading permit and may impose only
8 engineering conditions tied to the grading chapter. (SAR5405-5410).

9 The text and application of the grading provisions do not support such a narrow
10 characterization. Section 91011.03 authorizes the County engineer to grant a permit subject to
11 conditions designed to accomplish the purposes of the grading chapter, deny the permit, or refer
12 the application to the BOS. Petitioners also identify standards requiring judgment, including
13 whether grading would render irrigable land unfit for agricultural use. The BOS, in turn, may
14 deny the permit or impose conditions within the purposes of the chapter.

15 Judgment alone is not enough under *Protecting Our Water*. The critical question is
16 whether the authority can be used to shape the activity in response to environmental concerns.

17 The administrative record shows more than mechanical verification of a slope ratio or
18 compaction number. Public Works required a drainage and grading plan, a drainage and grading
19 certification, street improvements, an encroachment permit, a transportation permit, and a traffic
20 study to determine whether roadway or traffic modifications were necessary before approving
21 grading plans. (AR2653-2654, 2753). The site also presented soil-management and
22 contamination issues associated with extensive excavation. (AR2205; SAR5283-5287, 13542).

23 *Health First, McCorkle, and Madrigal* do not compel a different result. *McCorkle*
24 involved design review that could not address environmental effects. (*McCorkle*, supra, 31
25 Cal.App.5th at pp. 91-95). *Madrigal* involved a grading permit that conformed to a previously
26 approved CUP. The later permit was issued without new conditions, and the applicant did not
27 show the City exercising new discretion. (*Madrigal*, supra, 147 Cal.App.4th at pp. 1384-1386).

1 Instantly, no prior site-specific CUP or project level CEQA approval confines the grading
2 review to a settled design in this situation. The grading ordinance permits denial, referral, and
3 conditions, and the County's review generated project specific drainage, roadway, traffic, soil,
4 and safety requirements. (AR2205, 2653-2654, 2753; SAR5283-5287, 13542). The County has
5 not shown its role was limited to the fixed compliance review described in Respondents'
6 authorities.

7 The County argues the grading application was approved but the permit never issued,
8 making several claims premature. That does not save the NOE. The County treated its November
9 3, 2025, action as final enough to file an exemption notice. At minimum, the NOE embodies a
10 final determination that the grading activity was ministerial, and that determination is reviewable
11 here.

12 **E. The Lot Merger and Road Vacation Reinforce That the Whole Project Is Not**
13 **Ministerial**

14 The lot-merger process independently confirms the need to analyze the Project as a
15 whole. The Planning Commission held a public hearing, received hours of testimony, declined to
16 approve the merger, and directed additional discussions regarding the Project and its location
17 before reconsideration. The BOS later approved the merger subject to conditions including
18 common ownership, easement relocation or removal, and abandonment of Leimgruber Road.
19 (SAR4896-4898, 5002-5003, 5401, 5915-6006).

20 The Leimgruber Road vacation likewise serves the integrated Project because the road
21 bisects parcels needed for the unified site and the merger was conditioned on its abandonment.
22 Whether the vacation would always be ministerial in isolation is unnecessary to decide. It forms
23 part of the whole action for CEQA purposes.

24 Because the grading approval itself is not purely ministerial, and because the record
25 establishes an integrated Project involving the merger and vacation decisions, Guidelines §
26 15268(d) precludes treating the whole Project as exempt merely because some component
27 approvals may apply objective criteria.

28 ///

1 **F. Tier One Ends Here: The Ministerial Exemption Does Not Apply to the Whole**
2 **Project**

3 If the Project was ministerial, review would stop at Tier One. The grading provisions and
4 integrated approvals give the County more than a purely mechanical role. The statutory
5 ministerial exemption therefore does not apply to the whole Project.

6 **G. The Record Supports a Fair Argument of Significant Environmental Effects**

7 Because the Project is not exempt as ministerial, the Court proceeds through the
8 remaining CEQA tiers. The administrative record contains no project specific initial study for the
9 current development on which the County based a negative declaration. The County stopped
10 instead at the exemption stage. The question at the third tier is whether the existing record
11 contains substantial evidence supporting a fair argument that the whole Project may cause a
12 significant environmental effect. (PRC, § 21080(d); Guidelines, § 15064(f)(1); *No Oil*, supra, 13
13 Cal.3d at pp. 75, 83).

14 Substantial evidence includes facts, reasonable assumptions based on facts, and supported
15 expert opinion, but not argument, speculation, inaccurate information, or unsubstantiated
16 opinion. (PRC, § 21080(e); Guidelines, § 15384). The Court asks only whether the record
17 supports a fair argument that at least one significant environmental effect may occur.

18 **1. Energy and Electrical Infrastructure**

19 The Project proposes a 330-megawatt load, 330-megawatt substation, 862-megawatt-hour
20 BESS, major transmission interconnections, and substantial backup generation. (AR2050;
21 SAR14441.) The IID identified limited electrical capacity and utility facilities requiring
22 attention. (SAR4958-4961). These facts support a fair argument concerning grid, energy,
23 generation, and related physical-infrastructure effects.

24 **2. Water Supply, Wastewater, and Drainage**

25 The Project proposes cooling infrastructure, four 500,000-gallon water tanks, water
26 treatment, a retention basin, and possible reclaimed-water and wastewater conveyance.
27 (AR2050; AR2062-2072, 2641-2642; SAR13759, 13797). The record discusses reclaimed water,
28 treatment upgrades, wastewater disposal, agricultural fallowing, and IID facilities, including the

1 North Date Canal and Central Drain. (SAR4958-4961). This supports a fair argument concerning
2 water, wastewater, and drainage effects.

3 **3. Air Quality and Greenhouse-Gas Emissions**

4 The Project includes substantial natural-gas backup generation, continuous electrical
5 demand, construction emissions, and permitting for emergency generators. (AR2186;
6 SAR19112-19135). County planning policies also call for air-quality analysis of major projects.
7 The equipment, construction, and energy demand support a fair argument that the Project could
8 have significant air-quality and greenhouse-gas effects.

9 **4. Hazards, Hazardous Materials, and Fire Safety**

10 The Project combines a large BESS, natural-gas generation, electrical equipment, cooling
11 systems, and extensive grading on property with documented soil-management concerns.
12 (SAR5283-5287, 13542). County review also generated fire-flow, access, and safety
13 requirements. These conditions support a fair argument concerning hazardous materials, fire
14 safety, emergency response, and soil disturbance.

15 **5. Noise, Traffic, Public Services, and Land Use**

16 The Project entails continuous operations, cooling and generator equipment, substantial
17 grading, construction traffic, roadway work, utilities, and the Leimgruber Road vacation. County
18 staff noted a noise analysis had not yet been reviewed, and Public Works required a traffic study
19 before grading-plan approval. (SAR5774, 5800; AR2654, 2753). The agricultural parcel and
20 roadway changes also support a fair argument concerning noise, circulation, public services, and
21 land use.

22 **6. Cumulative and Growth-Inducing Effects**

23 The record identifies additional proposed data center sites, future energy production, and
24 infrastructure supporting further industrial development. (AR2730, 2964; SAR14964, 15182,
25 15287, 16137). This evidence supports a fair argument of cumulative or growth inducing effects
26 on water, air quality, energy infrastructure, public services, and agricultural resources.

27 ///

28 ///

1 **H. The Class 5 Exemption Does Not Provide an Alternative Basis to Uphold the Lot-**
2 **Merger CEQA Determination**

3 The April 8, 2026, NOE also invoked the Class 5 exemption for minor alterations in land-
4 use limitations. (Guidelines, § 15305; SAR4894). But this merger was undertaken to
5 accommodate the data center development and accompanied a road vacation and
6 ownership/easement conditions. (AR3904). The County may not isolate it from the whole Project
7 and treat it as a minor land-use adjustment.

8 Even if the merger could facially fit within Class 5 when viewed alone, Petitioners
9 identified evidence of unusual circumstances and cumulative effects associated with the Project's
10 scale and location. (Guidelines, § 15300.2; *Berkeley Hillside Preservation v. City of Berkeley*
11 (2015) 60 Cal.4th 1086, 1110-1116). Because the merger is an integral step in the same Project
12 and the Project is otherwise subject to CEQA, the Class 5 exemption does not independently
13 sustain the County's April 2026 CEQA determination.

14 **I. The 2017 Review Does Not Eliminate the Need for Current Environmental**
15 **Review**

16 Finality of the 2017 amendment does not resolve scope. By 2025-2026, the County had a
17 specific proposal identifying building size, electrical load, BESS, substation, generators, cooling
18 and water systems, transmission connections, grading, roadway issues, and site-specific
19 constraints - details materially beyond the generalized 2017 code amendments.

20 Nothing in the 2017 materials cited to the Court show that the Project's scale and
21 combined components were analyzed. Nor did the County perform the comparison found in *Wal-*
22 *Mart, Lucas, or Hilltop*, where the agencies tied their later action to a prior certified EIR and
23 addressed project specific effects. If the County believed the 2017 negative declaration remained
24 controlling under PRC § 21166 and Guidelines § 15162, it had to determine how that document
25 remained relevant to the present proposal and whether project changes, changed circumstances,
26 or new information required additional review. The challenged NOEs did not make that
27 determination; they relied on ministerial and categorical exemptions.

28 ///

1 **J. An EIR Is Required on the Present Record**

2 The record contains substantial evidence of potential effects not analyzed in the available
3 2017 materials, including energy and electrical infrastructure, water and wastewater, air
4 emissions, BESS and hazardous-material risks, circulation, grading, and cumulative
5 development. The County may dispute magnitude or identify mitigation, but at the fair argument
6 stage the Court does not weigh contrary predictions against evidence of potential significance.

7 The County, therefore, had to proceed beyond Tier One. Because the record supports a
8 fair argument that the whole Project may cause significant environmental effects, an EIR is
9 required for the Project presently before the Court. The County remains free to consider lawful
10 project revisions and relevant information from prior environmental documents during that
11 process.

12 **K. Remaining Non-CEQA Issues**

13 The parties also dispute common ownership, easement removal, BOS jurisdiction over
14 the merger appeals, road vacation requirements, plot plan timing, and zoning of Project
15 components. Those issues may affect future approvals but do not change the CEQA disposition
16 because the challenged Project approvals cannot remain effective pending the review required by
17 this decision.

18 **VI. DISPOSITION AND PROPOSED RELIEF**

19 For the reasons stated above, the Court **concludes that the petitions should be**
20 **GRANTED IN PART.**

21 As to the grading related determinations, reviewed through traditional mandate under
22 CCP § 1085 and PRC § 21168.5, the Court finds that the County failed to proceed as required by
23 CEQA when it treated the grading activity as ministerial and exempt from further environmental
24 review.

25 As to the lot-merger determination, reviewed through administrative mandate under CCP
26 § 1094.5 and PRC § 21168, the Court finds that the County prejudicially abused its discretion by
27 approving the lot merger without first completing the CEQA review required for the whole
28 Project.

1 Pursuant to PRC § 21168.9, if this tentative decision becomes final, the Court intends to
2 order the following relief:

3 **1. Grading Determination.** The County shall set aside its November 3, 2025,
4 determination that the grading activity for Grading Permit BP No. 63316 is ministerial and
5 exempt from CEQA, together with the NOE filed November 6, 2025.

6 **2. Grading Application Approval.** To the extent the November 2025 grading
7 application approval authorizes or commits the County to permit physical grading or
8 development of the Project before CEQA compliance, that approval shall be set aside. Nothing in
9 this decision determines whether a grading permit was formally issued as of the date of the
10 challenged action.

11 **3. Lot Merger and Related April 2026 CEQA Determination.** The County shall set
12 aside the April 2026 CEQA exemption determination associated with Lot Merger No. 00191 and
13 the vacation of Leimgruber Road, including the NOE filed April 8, 2026. Resolution No. 2026-
14 057, the lot-merger approval, and the related appeal determinations shall be set aside to the
15 extent necessary to remedy the CEQA violation identified above. Resolution No. 2026-056
16 concerning the road vacation shall likewise be set aside to the extent it constitutes an approval of
17 the integrated Project entered before CEQA compliance.

18 **4. 2017 Zoning Amendment and Negative Declaration.** The County shall not rely on
19 the 2017 Title 9 negative declaration as having completed project-specific CEQA review for the
20 data center Project. This decision does not invalidate the 2017 zoning amendment or adjudicate a
21 time-barred challenge to that amendment.

22 **5. Further CEQA Review.** Before reapproving the Project or allowing grading,
23 construction, or other physical development that would further commit the County to the Project,
24 the County shall identify the whole Project and conduct the environmental review required by
25 CEQA. Based on the fair argument analysis above, the Court finds that the present record
26 requires preparation and consideration of an EIR addressing the Project's reasonably foreseeable
27 direct, indirect, and cumulative environmental effects.

1 The significant environmental effects identified by Petitioners and addressed by the Court
2 are not necessarily inclusive. An EIR required by CEQA may or may not raise additional
3 environmental effects to be addressed therein.

4 **6. Prior Environmental Materials.** In conducting that review, the County may consider
5 and incorporate relevant information from prior environmental documents to the extent CEQA
6 permits. The County must, however, evaluate the Project's actual scale, components, operating
7 demands, infrastructure, and site-specific effects and may not presume that the 2017 zoning
8 amendment or negative declaration resolved those effects.

9 **7. Injunctive Relief.** As to the Tenth Cause of Action for injunctive relief, the Court
10 enjoins the County from processing any permits for the Project unless done so as directed in this
11 decision.

12 **8. Scope of Relief.** Nothing in the contemplated relief directs the County to approve or
13 deny the Project or predetermines any alternative, mitigation measure, or ultimate environmental
14 conclusion. Those matters remain for the County after it proceeds as required by CEQA.

15 **9. Remaining Claims and Relief.** The Court finds that the remaining requests for writ
16 relief should be **DENIED** to the extent they are unnecessary to the CEQA disposition stated
17 above, without prejudice to issues that may arise in future County proceedings.

18 If the Court adopts this tentative decision, the parties shall meet and confer and submit a
19 proposed writ and judgment consistent with the final decision within 20 days after service of
20 notice of entry, unless otherwise ordered.

21
22
23 DATED: 8-31-26

24
25 
26 L. BROOKS ANDERHOLT
27 Judge of the Superior Court
28