

Sebastian Rucci (State Bar #178114)
LAW OFFICES OF SEBASTIAN RUCCI, P.C.
16400 Pacific Coast Highway, Suite 212
Huntington Beach, CA 92649
Tel: (562) 901-0199
Sebastian@RucciLaw.com
Attorney for Real Parties in Interest

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF IMPERIAL**

City of Imperial

Petitioner and Plaintiff

vs.

County of Imperial, et. al.

Respondents and Defendants.

Imperial Valley Com. Mfg, LLC, *et. al.*

Real Parties in Interest

Sierra Club,

Intervenor.

Case No: ECU004457

Assigned for all Purposes

Honorable Judge L. Brooks Anderholt

Department: 9

**REAL PARTIES IN INTEREST'S
OBJECTIONS TO TENTATIVE
DECISION; REQUEST FOR
STATEMENT OF DECISION ON
CONTROVERTED ISSUES; AND
REQUEST FOR FURTHER HEARING**

1. INTRODUCTION.

Real Parties in Interest Imperial Valley Computer Manufacturing, LLC, et al. ("IVCM") object to the Tentative Decision served August 31, 2026 ("TD") under California Rules of Court, rule 3.1590(b) and (d), and request that, before the Tentative Decision becomes the decision of the Court, the Court modify it in the respects set out below or, at minimum, issue a statement of decision resolving the controverted issues identified in Section 9.

The Tentative Decision correctly holds three things Real Parties do not contest. The 2017 ordinance is operative and immune from collateral attack (TD 11:4-11). A data center is a permitted use in the M-1 and M-2 zones for which no conditional use permit is required (TD 11:9-10). And the question at Tier One is whether governing law gives the County "authority to shape the project in response to environmental concerns." (TD 9:1-2.) The objections below concern how that test was applied and what relief follows from it.

Four errors are dispositive. **First**, the Tentative Decision asks whether the grading chapter confers authority in the abstract – to deny, refer, or condition – rather than whether the County had environmentally meaningful discretion over this grading application. *Protecting Our Water* requires the latter, case-by-case inquiry and expressly preserves ministerial treatment of permits that do not trigger a discretionary standard. **Second**, it shifts the burden to the County to “show” that its role was fixed. **Third**, it sets aside the lot merger and the road vacation without finding either to be discretionary, on a whole-of-the-action theory that governs whether CEQA applies to a project, not whether an agency may withhold an approval the law compels it to grant. **Fourth**, the proposed relief exceeds Public Resources Code § 21168.9: it prescribes an EIR for a project configuration the County has not defined and that the record shows was superseded before the Board acted, and it enjoins the County from “processing any permits” – activity that cannot alter the physical environment and that § 21168.9 does not authorize a court to suspend. Real Parties also object to the findings concerning the 2017 process, which are unnecessary to the disposition and adjudicate a question the Court holds time-barred (Section 7).

2. **PROCEDURAL BASIS AND TIMELINESS.**

A tentative decision “does not constitute a judgment and is not binding on the court.” (Cal. Rules of Court, rule 3.1590(b).) Within 10 days after service of a tentative decision, any party may request a statement of decision specifying the principal controverted issues, and the court may modify its tentative decision at any time before judgment. (Rule 3.1590(b), (d); Code Civ. Proc., § 632.) The Tentative Decision was served August 31, 2026; these objections are filed within 10 days.

Real Parties request that the Court (1) modify the Tentative Decision as set out in Sections 3 through 8; (2) alternatively, if the Court adheres to its tentative conclusions, issue a statement of decision addressing each controverted issue listed in Section 9 so that the basis for the decision is stated on the record (Code Civ. Proc., § 632); and (3) set the matter for further hearing under Section 10 before the decision becomes final. To the extent the Court considers that a request under § 632 was required before submission, Real Parties request that the Court exercise its authority under rule 3.1590(c)(1) to treat the Tentative Decision as a proposed statement of decision and consider this filing as objections under rule 3.1590(g).

1 **3. OBJECTION NO. 1: THE TENTATIVE DECISION INVERTS THE**
2 **BURDEN OF PROOF.**

3 The Tentative Decision resolves the grading question with this sentence: “The
4 County has not shown its role was limited to the fixed compliance review described in
5 Respondents’ authorities.” (TD 14:4-6.) That is the wrong allocation. In mandamus, the
6 petitioner bears the burden of demonstrating that the agency acted unlawfully, and an
7 agency’s exemption determination is presumed correct until the challenger “affirmatively
8 show[s] that there was no substantial evidence to support” it. (*Cal. Native Plant Society v.*
9 *City of Rancho Cordova* (2009) 172 Cal.App.4th 603, 626; Evid. Code, § 664 [official duty
10 presumed regularly performed].) The Tentative Decision’s own statement of the governing
11 standard is to the same effect. (TD 6:23-7:2.) Whether the ministerial question is reviewed
12 independently or for substantial evidence, the burden of demonstrating error rests with
13 Petitioners; the presumption of regularity does not shift with the standard of review.

14 The Tentative Decision does not find that the record lacks substantial evidence for
15 the County's ministerial determination, nor that the County engineer in fact exercised any
16 environmentally meaningful judgment in approving the grading application. It finds instead
17 that the County failed to prove a negative. Petitioners never identified a grading-chapter
18 provision that authorized the Engineer to deny or redesign this campus because of
19 megawatts, water, air, or generators. Yet the Tentative Decision demanded that showing
20 from the County instead. Because every finding in Section V.G rests on the Tier One
21 conclusion, the error is prejudicial. Real Parties request that the Tentative Decision be
22 modified to state the correct burden and to identify the record evidence establishing that
23 the County possessed, and exercised, authority to reshape the Project through the grading
24 approval.

25 **4. OBJECTION NO. 2: THE GRADING APPROVAL WAS ANALYZED**
26 **UNDER THE WRONG TEST.**

27 **4.1 Protecting Our Water Requires an As-Applied Inquiry, Not an Abstract One.**

28 *Protecting Our Water & Env. Resources v. County of Stanislaus* (2020) 10 Cal.5th
479 (*Stanislaus*) holds that a permit is discretionary when the agency has authority to shape
the project in response to environmental concerns. (*Id.* at pp. 493-495.) But the Supreme

1 Court was equally clear about what its holding did not mean. The County’s error in
2 *Stanislaus* was a blanket classification of every well permit as ministerial; the remedy was
3 case-by-case classification, and the Court expressly preserved ministerial treatment of
4 permits that did not implicate the ordinance’s discretionary standard. (*Id.* at pp. 496-499.)

5 In doing so the Court approved *Sierra Club v. County of Sonoma* (2017) 11
6 Cal.App.5th 11, which held an erosion-control permit ministerial-even though the
7 governing ordinance conferred discretion in other applications-because the provisions
8 conferring discretion were not triggered by the project before the agency. (*Id.* at pp. 22-31.)
9 There, most of the ordinance’s provisions that potentially conferred discretion did not
10 apply, and the petitioners failed to show that the few that might apply conferred the ability
11 to mitigate environmental impacts to any meaningful degree. (*Id.* at pp. 27-31.) The
12 question is not whether the ordinance could ever confer discretion. It is whether the agency
13 had discretion, in an environmentally meaningful sense, over the permit at issue.

14 The Tentative Decision reasons from the ordinance in the abstract: ICC § 91011.03
15 “authorizes the County engineer to grant a permit subject to conditions designed to
16 accomplish the purposes of the grading chapter, deny the permit, or refer the application
17 to the BOS.” (TD 13:9-12.) Every permitting ordinance in California authorizes denial for
18 nonconformity, conditions to secure conformity, and some path of referral. If that were the
19 test, *McCorkle*, *Health First*, and *Madrigal* were wrongly decided and no grading permit
20 in the State is ministerial. The Tentative Decision itself acknowledges that “[j]udgment is
21 not enough if the agency can only verify fixed technical criteria.” (TD 8:15-16.)

22 The question the Tentative Decision does not answer is whether any provision of the
23 grading chapter gave the County authority to require this data center to be smaller, to be
24 located elsewhere, to be quieter, to use less water, or to be served by less backup
25 generation-the effects catalogued in Section V.G. None does. As in *Sonoma*, the provisions
26 that could have conferred environmentally meaningful authority - §§ 91011.02 and
27 91011.03 - were not triggered by this application.

28 Section 91011.03 permits denial only where the application conflicts with the
chapter, and permits conditions only when they are “designed to accomplish the purposes”
of the chapter. Section 91011.02 states that the Engineer may issue a grading permit if four

1 conditions exist: grading of irrigable land will not render it unfit for agricultural use; the
2 depth of grading will not preclude drain tile; the work will not extend below the water
3 table; and slope transitions meet the specified safety ratio. Those are objective,
4 site-engineering criteria addressed to the earthwork itself. (ICC §§ 91011.01-91011.03.)
5 None is a power to mitigate energy demand, air emissions, water supply, noise, hazardous
6 materials, or cumulative growth. Every effect catalogued in Section V.G - grid load,
7 cooling water, continuous emissions, BESS hazards, cumulative growth - is an effect of
8 operating a permitted use, not of moving dirt. A grading approval confers no authority over
9 any of them, and environmental review that cannot change the outcome is the idle exercise
10 *Stanislaus* and *McCorkle* exist to prevent. (*Stanislaus*, 10 Cal.5th at pp. 493-494; *McCorkle*
11 *Eastside Neighborhood Grp. v. City of St. Helena* (2018) 31 Cal.App.5th 80, 91-95.) An
12 agency that may condition how dirt is moved has no authority over what will be built on
13 it when the use is permitted by right, the Code requires no setback, and no design-review
14 discretion exists. (ICC §§ 90515.01, 90515.06, 90516.01, 90516.06.)

13 4.2 The Public Works Items Are Not Grading-Chapter Discretion.

14 The Tentative Decision relies on the items identified by Public Works at AR
15 2653-2654 and 2753: a drainage and grading plan, a drainage and grading certification,
16 street improvements, an encroachment permit, a transportation permit, and a traffic study.
17 (TD 13:17-21.) Each is either a submittal demonstrating conformity with adopted
18 standards, or a separate permit issued under separate law by application of its own fixed
19 criteria. An encroachment permit governs work within the public right-of-way under the
20 County's road standards; a transportation permit is the statutory permit for oversize or
21 overweight loads (Veh. Code, § 35780). A drainage certification certifies conformity to
22 adopted drainage criteria. A traffic study identifies which adopted roadway standards apply.
23 A requirement that an applicant demonstrate conformity with existing objective standards
24 is the fixed technical criteria that the Tentative Decision correctly recognizes do not amount
25 to discretion (TD 8:15-16), and Sonoma holds that a permit does not become discretionary
26 because the agency may insist on compliance with existing standards. (*Sierra Club v.*
27 *County of Sonoma*, *supra*, 11 Cal.App.5th at pp. 27-30.)

28 The Tentative Decision identifies no provision authorizing the County to deny
grading, or to alter the size, siting, or operation of the campus, based on the result of the
traffic study or the drainage certification, and no evidence that the County did so. Absent

1 that, the Public Works list shows only that the County required the applicant to prove
2 conformity - which is what a ministerial review is. The Tentative Decision's contrary
3 reading would make every non-trivial grading permit in the County a CEQA project
4 whenever Public Works asks for a drainage plan or a traffic study - a result irreconcilable
5 with the Guidelines' treatment of building permits and comparable approvals as
6 presumptively ministerial. (Guidelines, § 15268, subd. (b).)

7 **4.3 Soil Management Is DTSC's Jurisdiction, Not the County's.**

8 The Tentative Decision also relies on "soil-management and contamination issues
9 associated with extensive excavation." (TD 13:21-22, citing AR 2205; SAR 5283-5287,
10 13542.) Those issues arise under the Department of Toxic Substances Control's land use
11 covenant and its excavation-approval jurisdiction under the Health and Safety Code. They
12 are addressed by a different agency, under its own standards, in a proceeding that continues
13 regardless of the Project's CEQA status. The County's grading chapter confers no authority
14 to regulate contamination. The record references concern how excavated material is to be
15 handled during construction – a construction-management matter governed by DTSC's
16 covenant – not a grant of power to redesign the data center. To the extent the Tentative
17 Decision treats DTSC oversight as evidence of County discretion, it conflates agencies; on
18 that reasoning every grading permit on a covenanted site in California would be
19 discretionary irrespective of the local ordinance.

20 **4.4 The Agricultural-Use Standard Is Objective and Was Not Triggered.**

21 The Tentative Decision cites the standard condition concerning "whether grading
22 would render irrigable land unfit for agricultural use." (TD 13:12-13.) The 70 acres on
23 which the data center, substation, and backup systems sit have been zoned industrial since
24 1974 and 1991 (AR 3979-3985); the standard addresses the preservation of irrigable
25 agricultural land and has no application to grading for an industrial use on industrially
26 zoned land. As to the five-acre A-2 parcel, the only proposed use is a retention basin (SAR
27 6053), and irrigability is an objective measure. Applying an objective standard requires
28 judgment; it does not confer the authority to reshape the Project that *Stanislaus* requires.
(*Stanislaus*, *supra*, 10 Cal.5th at pp. 493-495.)

1 **4.5 By-Right Zoning Performs the Design-Fixing Role the Tentative Decision**
2 **Assigns to Madrigal’s CUP.**

3 The Tentative Decision distinguishes *Madrigal v. City of Huntington Beach* (2007)
4 147 Cal.App.4th 1375 because a prior CUP confined the later grading review to a settled
5 design, and states that “no prior site-specific CUP or project level CEQA approval confines
6 the grading review” here. (TD 13:25-14:2.) That distinction proves Real Parties’ point. For
7 a use permitted by right, the zoning ordinance - adopted with CEQA review and now
8 conceded to be operative - is what fixes the permissible use, intensity, setback, and height.
9 The County has no CUP to issue because the legislative judgment a CUP would embody
10 was made in 2017 and reaffirmed in 2019, 2020, 2022, and 2023. The absence of a CUP
11 is not evidence of discretion; it is the consequence of the use being permitted without one.

12 **4.6 The Grading Approval Authorizes No Physical Activity.**

13 Real Parties do not dispute that the County’s ministerial determination is reviewable.
14 (TD 14:7-11.) But relief item 2 sets aside an approval “[t]o the extent [it] authorizes or
15 commits the County to permit physical grading.” (TD 19:6-9.) The stipulated facts establish
16 that no grading permit issued, no grading occurred, and none may occur until all conditions
17 - including plot plan approval - are satisfied. (Stip. Facts, Admissions 4-6.) The November
18 3, 2025 action approved an application subject to conditions and authorized nothing
19 physical. The writ should so state, and should not direct the County to set aside conditions
20 that themselves embody the fixed standards the County applied.

21 **5. OBJECTION NO. 3: THE LOT MERGER AND ROAD VACATION**
22 **CANNOT BE SET ASIDE ON A THEORY THAT DOES NOT FIND THEM**
23 **DISCRETIONARY.**

24 **5.1 CEQA Confers No Authority to Withhold a Ministerial Approval.**

25 The Tentative Decision makes no finding that Lot Merger No. 00191 or the vacation
26 of Leimgruber Road is discretionary. As to the vacation it says so expressly: “Whether the
27 vacation would always be ministerial in isolation is unnecessary to decide.” (TD 14:22-23.)
28 As to the merger it reasons from procedure, not authority. (TD 14:14-19.) Both are set aside
because they “form[] part of the whole action for CEQA purposes.” (TD 14:23.)

That reasoning conflates two different questions. Guidelines § 15268, subdivision
(d), and the whole-of-the-action rule determine whether CEQA applies to a project that
includes a discretionary approval. They do not enlarge the agency’s authority over the
project’s ministerial components. CEQA “does not grant an agency new powers

1 independent of the powers granted to the agency by other laws.” (Guidelines, § 15040,
2 subd. (b); Pub. Resources Code, § 21004.) An approval the County had no discretion to
3 withhold is not one it may withhold pending an EIR, and an EIR cannot inform a decision
4 the law has already made.

5 Chapter 8 of the County Code and Government Code § 66499.20.3 fix the merger
6 criteria - conformance with the ordinance and state law, access, easements, creation of no
7 new lots, and no conflict with existing structures (ICC § 90808.03) - none of which asks
8 whether a data center should be built; the Tentative Decision does not find that the
9 application failed any of them. Setting aside Resolution 2026-057 serves no CEQA
10 purpose unless the Tentative Decision first finds that Chapter 8 authorized the Board to
11 deny or reshape the merger for environmental reasons. It does not. Vacating a
12 determination made on those criteria, without finding any of them unmet, is not "necessary"
13 to achieve CEQA compliance. (Pub. Resources Code, § 21168.9, subd. (b).) "The law
14 neither does nor requires idle acts." (Civ. Code, § 3532.)

15 **5.2 Hearings, Testimony, and Recordation Conditions Are Not Discretion.**

16 The Tentative Decision reasons that the Planning Commission “held a public
17 hearing, received hours of testimony, declined to approve the merger, and directed
18 additional discussions,” and that the Board approved subject to conditions. (TD 14:14-19.)
19 *Stanislaus* locates discretion in legal authority to shape the project, not in the procedural
20 form of the proceeding. (*Stanislaus, supra*, 10 Cal.5th at pp. 493-495.) A public hearing
21 on a ministerial application does not confer authority the Code withholds. The
22 Commission’s direction that IVCN obtain the “agreement” of two cities and “the
23 community” that the Project was “valuable in that location” (SAR 5641, 13602) is not a
24 Chapter 8 finding. Social and political opposition is not an environmental effect. (*Preserve
25 Poway v. City of Poway* (2016) 245 Cal.App.4th 560, 579.) An agency cannot manufacture
26 CEQA discretion by exceeding its authority.

27 The Board’s conditions - common ownership, easement removal or relocation, and
28 abandonment of Leimgruber Road before recordation (SAR 5002-5003) - are the Code’s
own recordation prerequisites. (ICC § 90808.00, subd. (C); Gov. Code, § 66499.20.3.)
None addresses an environmental effect; none gives the County a lever to make the data
center smaller or quieter. If those conditions render a merger discretionary, every lot merger
in the County is discretionary and the Chapter 8 ministerial procedure is a nullity.

1 **5.3 The Administrative Mandamus Finding Lacks a Predicate.**

2 The Tentative Decision finds that the County “prejudicially abused its discretion by
3 approving the lot merger without first completing the CEQA review required for the whole
4 Project.” (TD 18:25-28.) An agency cannot abuse discretion it does not possess. The
5 Tentative Decision should either find, on identified Code provisions and record evidence,
6 that the Board had authority under Chapter 8 to deny or condition the merger for
7 environmental reasons, or deny the Fifth Cause of Action.

8 **5.4 The Road-Vacation Claims Are Barred and, in Any Event, Ministerial.**

9 Sierra Club’s challenge to the road vacation under the Streets and Highways Code
10 and Government Code § 65402 was not raised at the administrative level and is barred for
11 failure to exhaust. (SAR 13430-13431, 13434-13435; Response § 14.) The Tentative
12 Decision does not rule on exhaustion. Summary vacation under Streets and Highways Code
13 § 8334 turns on objective criteria; the Board’s finding that the segment lies within property
14 under one ownership and does not touch property of another (SAR 4899) rests on a
15 stamped surveyor’s diagram and legal description (SAR 4982-4983, 4988), and the
16 conditional structure of Resolution 2026-056 is what § 8324, subdivision (b), expressly
17 authorizes. Relief item 3 sets aside Resolution 2026-056 “to the extent it constitutes an
18 approval of the integrated Project” without deciding whether it does. Real Parties request
19 a ruling on exhaustion and, if the merits are reached, a finding that summary vacation under
20 § 8334 is ministerial.

21 **6. OBJECTION NO. 4: THE PROPOSED RELIEF EXCEEDS § 21168.9.**

22 **6.1 The Court Should Not Prescribe an EIR on a Record the County Never
23 Developed for That Purpose.**

24 Section V.G evaluates air quality and hazards against “132 natural-gas generators”
25 and a “330-megawatt emergency-generator facility.” (TD 4:10-11; 15:19-21; 16:4-5,
26 10-11.) That configuration was not before the Board on April 7. The plans and APCD
27 analysis submitted March 12, presented March 26, and lodged April 1 described 20
28 natural-gas generators (SAR 6053, 19112–19135). A fair-argument finding aimed at a
project no one was proposing when the merger issued cannot support relief as to that
approval.

1 Section 21168.9 forbids a court from directing “the manner in which the public
2 agency shall exercise its discretion” (Pub. Resources Code, § 21168.9, subd. (c).) Where
3 an agency stopped at Tier One, the compliance CEQA requires is Tier Two: identify the
4 whole project (Guidelines, § 15378), prepare an initial study (Guidelines, § 15063), and
5 determine the appropriate environmental document. The Tentative Decision skips that step
6 and adjudicates the Tier Three question itself (TD 15:6-16:26; 18:1-11; relief item 5), on
7 a record consisting of application materials and public comment, without an initial study,
8 and as to the superseded 132-generator configuration. The Court correctly declined to
9 consider the May 2026 revised plans in defense of the earlier approvals (TD 10:22-11:2),
10 but that ruling cuts both ways: a record that cannot be used to defend the approvals cannot
11 be used to prescribe the environmental document for a project the County has not yet
12 defined.

13 As the Tentative Decision recognizes (TD 12, fn. 2), whether project changes and
14 prior review require further analysis is a predominantly factual question committed to the
15 agency in the first instance. (*Friends of College of San Mateo Gardens v. San Mateo*
16 *County Community College Dist.* (2016) 1 Cal.5th 937, 952-953.) The same principle
17 governs which document the whole Project requires.

18 The generator reduction is not a post-decision matter. IVCN submitted the revised
19 site and grading plans on March 12, 2026 (SAR 6053), presented them to the Board at the
20 March 26, 2026 special meeting (SAR 4965-4966, 5657-5863), and submitted the revised
21 APCD analysis on April 1, 2026 (SAR 19112-19135) - all before the Board acted on April
22 7. As to the lot merger and road vacation, the 20-generator, 191-foot-setback, bermed
23 configuration was the Project before the agency. The Court should not order an EIR for a
24 132-generator facility no one has proposed since March.

25 Two features of Section V.G underscore the point. First, it relies on the observation
26 that a noise analysis “had not yet been reviewed” (TD 16:17-18, citing SAR 5774, 5800).
27 The absence of a completed study is not substantial evidence of a significant effect;
28 substantial evidence means facts, reasonable assumptions predicated on facts, and expert
opinion supported by facts, not the state of the agency’s file. (Pub. Resources Code, §

1 21080, subd. (e); Guidelines, § 15384.) Second, it relies on IID’s statement of “limited
2 electrical capacity” (TD 15:21-22, citing SAR 4958-4961), which concerns whether IID
3 will serve the Project – a question pending before IID and the subject of a separate petition
4 the Court noticed only for its existence (TD 10:20-21).

5 Real Parties request that relief item 5 be modified to direct the County to identify
6 the whole Project and conduct the environmental review CEQA requires, without
7 prescribing the resulting document. At minimum, the Court should apply the remedy
8 Stanislaus itself imposed - a remand for the agency to make an express, record-supported,
9 case-by-case determination whether this grading application and this merger required
10 environmentally meaningful discretion - rather than an order that assumes the answer and
11 prescribes the document. (*Stanislaus, supra*, 10 Cal.5th at pp. 496-499.) Alternatively, the
12 decision should state expressly that the fair-argument findings in Section V.G rest on the
13 record as of the challenged approvals and do not bind the County’s review of the Project
14 as revised.

15 6.2 The Injunction Against “Processing Any Permits” Is Overbroad.

16 Relief item 7 “enjoins the County from processing any permits for the Project unless
17 done so as directed in this decision.” (TD 20:9-11.) Section 21168.9 authorizes a court to
18 suspend “any or all specific project activity or activities” that “could result in an adverse
19 change or alteration to the physical environment.” (Pub. Resources Code, § 21168.9, subd.
20 (a)(2).) Processing an application changes nothing physical. Subdivision (b) further
21 requires that the order “be limited to that portion of a determination, finding, or decision
22 or the specific project activity or activities found to be in noncompliance,” and that the
23 court make findings supporting that limitation.

24 Item 7 is also indefinite. It does not say what is “directed,” and read literally it
25 forbids the very processing that CEQA compliance requires: the County cannot conduct
26 environmental review of an application it is enjoined from processing. It reaches permits
27 over which the County exercises no lead-agency role (the APCD is a separate district
28 whose pending permit the Tentative Decision does not adjudicate), and permits –
encroachment, transportation – that are themselves ministerial. Real Parties request that

1 item 7 be modified to enjoin the issuance of any grading, building, or other permit
2 authorizing physical development of the Project pending compliance with CEQA, and to
3 state that the County may receive, process, and review applications and conduct
4 environmental review in the interim, with the findings subdivision (b) requires.

5 **6.3 The Remaining Claims Should Be Decided, Not Deferred.**

6 Relief item 9 denies the remaining requests “to the extent they are unnecessary to
7 the CEQA disposition . . . without prejudice to issues that may arise in future County
8 proceedings.” (TD 20:15-17.) Section V.K identifies them: common ownership, easement
9 removal, Board jurisdiction over the appeals, road-vacation requirements, plot plan timing,
10 and the zoning of Project components. (TD 18:13-15.) Each was fully briefed. Each is a
11 question of law on a judicially noticeable ordinance. Each will recur the moment the
12 County re-approves. Deferring them “without prejudice” invites a second writ on the same
13 record and defeats the finality that section 632 exists to provide. Real Parties request
14 rulings that:

- 15 (a). data centers are permitted uses in the M-1 and M-2 zones without a conditional use
16 permit (ICC §§ 90515.01(bbb), 90516.01(w)), as the Tentative Decision already
17 holds (TD 11:9-10), and the Code draws no distinction for “hyperscale” or “AI”
18 data centers;
- 19 (b). utility substations are permitted uses (ICC §§ 90515.01(vvvvvvvv), 90516.01(b)),
20 and backup generators and battery storage serving the data center are permitted
21 accessory uses (ICC §§ 90516.01(hh), 91401.00);
- 22 (c). no rezoning is required for a merged parcel exceeding 40 acres (ICC § 90501.01),
23 and the vacated road segment takes the zoning of abutting property by operation of
24 law (ICC § 90201.01);
- 25 (d). the Board had jurisdiction over Appeals 25-0004 and 25-0005 (ICC §§ 90101.11,
26 90103.10(M)) and adopted Resolution 2026-057 with conditions of approval;
- 27 (e). common ownership and easement removal are lawful conditions precedent to
28 recordation under ICC § 90808.00(C) and Government Code § 66499.20.3;
- (f). Sierra Club’s road-vacation claims are barred for failure to exhaust; and
- (g). the plot-plan sequencing and NOE-prematurity claims are unripe or moot because
no grading permit has issued.

1 **6.4 Relief Items 2 and 3 Are Too Indefinite to Be Enforced.**

2 Items 2 and 3 set aside the grading approval and Resolutions 2026-057 and
3 2026-056 “to the extent” they authorize or commit the County to the Project or are
4 “necessary to remedy the CEQA violation.” (TD 19:6-17.) A peremptory writ must tell the
5 agency what it is to do; an agency cannot file a return to an order whose scope depends on
6 a characterization the order does not supply. Real Parties request that the writ identify, by
7 resolution and by condition, precisely what is set aside and what remains in effect, and that
8 it state that the lot merger and road vacation are not set aside for the reasons in Section 5.

9 **7. OBJECTION NO. 5: THE FINDINGS CONCERNING THE 2017 PROCESS**
10 **ARE UNNECESSARY TO THE DISPOSITION AND SHOULD BE**
11 **OMITTED.**

12 Sections II.A, V.B, and V.I make findings about what the 2017 materials did and did
13 not do: that the notices described “minor” changes, that staff materials did not “separately
14 analyze” data centers, that the Initial Study devoted “only one page” to land use, and that
15 the negative declaration “did not prospectively complete” review. (TD 3:3-27; 11:14-12:3;
16 17:14-27.) Footnotes 1 and 2 correctly confine the Court’s holding to whether the 2017
17 negative declaration “independently sustain[s]” the County’s ministerial determination.

18 The County’s NOEs did not rely on the 2017 negative declaration; the Tentative
19 Decision says so. (TD 12:12; 17:26-27.) The Tentative Decision nonetheless faults the
20 County for not invoking Guidelines § 15183 or Public Resources Code § 21166 (TD
21 12:10-12; 17:23-27). Those provisions govern later discretionary approvals that rely on a
22 prior environmental document. An agency that correctly determines a project is ministerial
23 has no occasion to invoke either; the absence of that analysis is a consequence of the
24 ministerial determination, not evidence against it. *Wal-Mart*, *Lucas*, and *Hilltop* each
25 involved a discretionary approval and are inapposite for the same reason. The additional
26 findings are therefore unnecessary to the disposition. They adjudicate, in substance, the
27 adequacy of a CEQA document whose challenge the Court holds time-barred (TD 11:4-11),
28 and they risk preclusive effect in future proceedings under Pub. Res. Code § 21166 and
Guidelines § 15162, where the County retains first-instance authority. Real Parties request
that those passages be stricken or conformed to footnotes 1 and 2 and to relief item 4.

1 The Tentative Decision’s treatment of the stipulated facts compounds the problem.
2 It discounts Planning Director Minnick’s statement to the Board that the County compared
3 data centers with other by-right uses before adding them in 2017 (SAR 5993) on the ground
4 that “the parties stipulated that supporting documents could not be located.” (TD 11:23-24;
5 see TD 3:22-27.) The stipulation establishes only that the County could not locate certain
6 nine-year-old documents; it does not establish that the analysis did not occur, and it cannot
7 negate the Director’s account of it. Evidence Code § 664 and the substantial-evidence
8 standard do not permit an adverse inference from a missing 2017 file to cancel a later
9 statement in the record (SAR 5993). The Court must presume official duty was regularly
10 performed. (*Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 571.)
11 The Tentative Decision should be modified to omit the inference, or to state the evidentiary
12 basis on which the Court concludes the 2017 comparison was not performed.

13 **8. CLERICAL CORRECTIONS.**

14 Page 9, line 12: “Guidelines § 1526(d)” should read “Guidelines § 15268(d).” Page
15 20, lines 1-2: “not necessarily inclusive” appears intended to read “not necessarily
16 exhaustive.” Page 4, line 11: the 330-megawatt generator facility with 132 generators
17 should be identified as the configuration superseded on March 12, 2026 (SAR 6053).

18 **9. REQUEST FOR STATEMENT OF DECISION: PRINCIPAL**
19 **CONTROVERTED ISSUES.**

20 If the Court adheres to its tentative conclusions, Real Parties request a statement of
21 decision under Code of Civil Procedure § 632 and rule 3.1590(d) explaining the factual and
22 legal basis for the decision on each of the following principal controverted issues:

- 23 1. Whether Petitioners, as the parties challenging the County’s exemption
24 determinations, bear the burden of proof, and what record evidence satisfies it.
- 25 2. Whether any provision of Imperial County Code §§ 91011.01 through 91011.03
26 confers authority on the County to deny, redesign, relocate, reduce, or otherwise
27 reshape the Project, or to mitigate the energy, water, air, noise, hazard, circulation,
28 or cumulative effects identified in Section V.G; if so, which provision; and what
record evidence shows the County exercised it.

3. Whether the items identified at AR 2653-2654 and 2753 are conditions imposed under the grading chapter or requirements of separate permits and adopted standards, and whether any confers discretion to shape the Project.
4. Whether the soil-management conditions cited at AR 2205 and SAR 5283-5287 derive from County authority under the grading chapter or from DTSC's jurisdiction.
5. Whether Lot Merger No. 00191 is a ministerial approval under Chapter 8 of the County Code and Government Code section 66499.20.3, and, if discretionary, which provision confers discretion to address environmental effects.
6. Whether summary vacation under Streets and Highways Code § 8334 is ministerial, and whether Sierra Club exhausted its administrative remedies as to the road-vacation claims.
7. Whether CEQA authorizes a court to set aside a ministerial approval because it forms part of a project that also includes a discretionary approval, in light of Public Resources Code section 21004 and Guidelines section 15040.
8. Whether, consistent with Public Resources Code § 21168.9, subdivision (c), the Court may direct preparation of an EIR where the agency has not conducted an initial study and the project has been revised, rather than directing the agency to conduct the review CEQA requires.
9. Whether relief item 7 is limited to activities that could result in an adverse change to the physical environment (§ 21168.9, subd. (a)(2)), and the findings required by subdivision (b).
10. Whether the fair-argument findings in Section V.G rest on substantial evidence as defined in Public Resources Code § 21080, subdivision (e), rather than on the absence of completed studies or on matters pending before other agencies.
11. Whether the fair-argument findings concerning air quality, hazards, and backup generation may rest on the 132-generator configuration when the record before the Board on April 7, 2026 reflected the 20-generator configuration submitted March 12 and April 1, 2026 (SAR 6053, 19112-19135).

1 12. Whether the stipulated facts support an inference that the County did not compare
2 data centers with other by-right uses in 2017, notwithstanding the Planning
3 Director's statement at SAR 5993 and Evidence Code § 664.

4 13. The rulings requested in Section 6.3(a) through (g) on the non-CEQA zoning,
5 Subdivision Map Act, jurisdiction, and ripeness issues.

6 10. **REQUEST FOR FURTHER HEARING.**

7 Real Parties request that the Court set the matter for further hearing before the
8 decision becomes final. Real Parties do not seek to reopen the administrative record. They
9 request argument limited to the burden of proof, the as-applied *Stanislaus* test, the
10 treatment of the merger and vacation under § 15268(d), and the form of relief under §
11 21168.9.

12 11. **CONCLUSION.**

13 Real Parties respectfully request that the Court modify the Tentative Decision as set
14 out above; alternatively, issue a statement of decision on the controverted issues in Section
15 9; and set the matter for further hearing.

16 Respectfully submitted,

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18 LAW OFFICES OF SEBASTIAN RUCCI, P.C.

19 /s/ Sebastian Rucci

20 Sebastian Rucci (State Bar #178114)

21 Attorney for Real Parties in Interest
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1 **ATTORNEY’S CERTIFICATE OF SERVICE BY E-MAIL**

2 I, Sebastian Rucci, certify that I am an active member of the State Bar of California
3 and am not a party to this cause. My business address is 16400 Pacific Coast Highway,
4 Suite 212, Huntington Beach, CA 92649.

5 I CERTIFY THAT on September 1, 2026, the REAL PARTIES IN
6 INTEREST’S OBJECTIONS TO TENTATIVE DECISION; REQUEST FOR
7 STATEMENT OF DECISION ON CONTROVERTED ISSUES; AND REQUEST
8 FOR FURTHER HEARING was served electronically on the City of Imperial, on its
9 counsel Alene Taber at alene@alenetablerlaw.com; on Sierra Club, on its counsel Josh
10 Chatten-Brown at jcb@chattenbrownlawgroup.com, Kathryn Pettit at
11 kmp@chattenbrownlawgroup.com, Isabella Coye at igc@chattenbrownlawgroup.com,
12 Winter King at King@smwlaw.com, and Susannah T. French at French@smwlaw.com;
13 and on the County of Imperial and Imperial County Board of Supervisors, on their
14 counsel Nathan George at Ngeorge@rmmenvirolaw.com and Mistelle Abdelmagied at
15 mistelleabdelmagied@co.imperial.ca.us, by One Legal, through the www.onelegal.com
16 interface, and by e-mail from my law office. The transmissions were complete without
17 error and I did not receive an electronic notification to the contrary.

18
19 LAW OFFICES OF SEBASTIAN RUCCI, P.C.

20 /s/ Sebastian Rucci
21 Sebastian Rucci (State Bar #178114)
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