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CITY OF IMPERIAL

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF IMPERIAL

CITY OF IMPERIAL, a general law city,

Petitioner and Plaintiff,

v.

COUNTY OF IMPERIAL, a general law
county, IMPERIAL COUNTY BOARD
OF SUPERVISORS; and DOES 1 to 20,
inclusive,

Respondents and Defendants.

IMPERIAL VALLEY COMPUTER
MANUFACTURING, LLC, a California
Limited Liability Company; DUBOSE

Case No. ECU004457

**PETITIONERS SIERRA CLUB AND CITY OF
IMPERIAL'S JOINT OPPOSITION TO REAL
PARTIES' FIRST AND AMENDED
OBJECTIONS TO TENTATIVE DECISION
AND RELATED REQUESTS**

Assigned for All Purposes to:
Hon. L. Brooks Anderholt, Dept. 9

Action Filed:	December 4, 2025
First Amended Petition:	January 7, 2026
Second Amended.:	March 11, 2026
Supplemental:	May 5, 2026

ELECTRONICALLY FILED
Superior Court of California,
County of Imperial
09/08/2026 at 03:59:11 PM
By: Angela Jantz, Deputy Clerk

DESIGN GROUP, INC., a California
General Stock Corporation; JESUS
BARRIGA, an individual; ROBERTO
BARRIGA, an individual; ATEN
PROPERTIES, LLC, a California Limited
Liability Company; HERMENEGILDA
LEIMGRUBER, AS TRUSTEE OF THE
MAX AND HERMENEGILDA
LEIMGRUBER LIVING TRUST
SURVIVOR’S TRUST, U/A DATED
AUGUST 14, 2024; DARYL DICKERSON
AND HEATHER
DICKERSON, AS TRUSTEES OF THE
DARYL AND HEATHER DICKERSON
FAMILY TRUST UNDER
DECLARATION OF TRUST DATED
APRIL 21, 2009; JAMES A. SANDERS
JR., AND STEPHANIE A. SANDERS AS
TRUSTEES OF THE JAMES A. AND
STEPHANIE A. SANDERS FAMILY
TRUST DATED JULY 27, 2009; RYAN
DICKERSON, an individual; and, ROES 1
to 20, inclusive,

Real Parties in Interest.

SIERRA CLUB

Intervenor.

Intervention:

May 28, 2026

Trial Date:

July 29, 2026

Trial Time;

8:30 am

1 **I. INTRODUCTION**

2 The Court’s August 31, 2026 Tentative Decision got it right: Respondent County of Imperial
3 (“County”) violated the California Environmental Quality Act (“CEQA”) through its ministerial
4 classification and ministerial approvals for the discretionary 330-megawatt Data Center Complex
5 (“Project”). As this Court’s tentative correctly found, the County’s code permits discretion, and the
6 County exercised discretion to process the Project as evidenced by the record. Real Parties in Interests’
7 (collectively, “IVCM”) lengthy *Amended Real Parties In Interest’s Objections To Tentative Decision,*
8 *Request For Statement Of Decision On Controverted Issues; and Request For Further Hearing*
9 (“Objections”) are not only untimely and procedurally improper, but they also attempt to re-litigate
10 issues this Court already considered and decided in its well-reasoned Tentative Decision.¹

11 The Court should reject IVCM’s Objections. First, IVCM’s Request for Statement of Decision is
12 time barred and should be denied, based on the plain language of the statutes it invokes. In any event,
13 Statement of Decisions are not required for CEQA cases decided on the administrative record.

14 Second, if the Court considers IVCM’s Objections, they should be denied as an attempt to
15 relitigate the issues the Court already decided and to ignore the Tentative Decision’s clear, detailed
16 findings and citations to the record. IVCM’s conflicting, baseless arguments lack citation to the record
17 and only further demonstrate that the Tentative Decision should be upheld. IVCM attacks the Tentative
18 Decision without any new basis or information. Notably, the County has not joined in IVCM’s
19 Objections. This Court should reject IVCM’s Objections and uphold its Tentative Decision.

20 Third, IVCM’s “Request for Further Hearing” is at its core a request that the Court hold a second
21 merits hearing on multiple issues because it disagrees with the Court’s Tentative Decision. The matter
22 was taken under submission on July 29, 2026. The Court heard from all parties through the extensive
23 briefing and oral argument, and reviewed the record and hearing transcripts. IVCM’s Objections simply
24 repeat the same arguments and fail to identify any error. The Court should deny IVCM’s request for
25 another hearing on the merits of its Tentative Decision. Sierra Club and the City of Imperial
26 (“Petitioners”) request the Court uphold the tentative decision and issue a final ruling.

27 ¹ IVCM first filed a prior set of objections. The most-recent filed Objections repeat many of the same
28 arguments, albeit worded slightly differently, except IVCM has since dropped its failure-to-exhaust
arguments on the road vacation claims, expanded on Attachment H—which this Court already reviewed
and rejected—and added a new Section 5.5 on *Berkeley Hillside*, which the Court also already
considered. Because IVCM states the September 2, 2026 most-recent Objections “replace” (p. 3) the
prior filing, Petitioners only address the arguments raised in the most-recent Objections.

1 **II. IVCN'S REQUEST FOR A STATEMENT OF DECISION IS PROCEDURALLY**
2 **IMPROPER, UNTIMELY, UNNECESSARY, AND SHOULD BE DENIED**

3 IVCN appears to concede it failed to submit its request for a statement of decision before
4 submission of the matter. (Obj., p. 3.) Code of Civil Procedure ("CCP") Section 632 mandates that a
5 request for statement of decision "must be made within 10 days after the court announces a tentative
6 decision *unless the trial is concluded within one calendar day or in less than eight hours over more than*
7 *one day in which event the request must be made prior to the submission of the matter for*
8 *decision.*" (CCP Section 632 (a), (b), emphasis added.) Rules of Court, rule 3.1590 (n) reiterates the
9 requirement: "When a trial is completed within one day or in less than eight hours over more than one
10 day, a request for statement of decision *must* be made before the matter is submitted for decision"
11 (Emphasis added.) The trial was concluded within one day. IVCN did not make any request prior to the
12 submission of the matter, and cannot do so now that it does not agree with the Court's tentative.
13 Therefore, IVCN's request is untimely and the Objections should be denied.

14 IVCN's request that the Court "treat the Tentative Decision as a proposed statement of decision"
15 and "consider [its] filing as objections under rule 3.159(c)(1)" subverts the plain language of the Court's
16 Tentative Decision—clearly labeled as such—and the statutory requirements. The Court issued the
17 Tentative Decision pursuant to Rule of Court 3.1590 and cites to Rule 3.1590(h) ["Preparation and filing
18 of written judgment when statement of decision not prepared"].²

19 Additionally, the Court is not required to issue a Statement of Decision in CEQA writ
20 proceedings. (*Consolidated Irrigation Dist. v. City of Selma* (2012) 204 Cal.App.4th 187, 196 fn. 5.)

21 Finally, the Tentative Decision addresses the principal threshold issue: whether the County
22 improperly classified the Project as exempt from CEQA. If the Court considers issuing a Statement of
23 Decision, Petitioners reiterate all their arguments and request the items in Section IV be addressed, and
24 preserve all arguments for any appeal.

25 **III. THE COURT SHOULD UPHOLD ITS WELL-REASONED TENTATIVE AND REJECT**
26 **IVCN'S BASELESS OBJECTIONS**

27 If the Court considers the Objections, they should be rejected for the following reasons.

28 **A. The Court Properly Found an EIR is Required**

IVCN objects to the Court's direction of preparation of an EIR for the Project on three claimed

² Notably, the Tentative Decision addresses much of IVCN's requests. (See Item #7, Obj., p. 20.)

1 grounds: (1) the County did not develop the record for that issue, (2) the relief exceeds the Court’s
2 jurisdiction under Section 21168.9, and (3) the Project may change. (Obj., p. 2, 14-16 [Section 6.1].)

3 First, Petitioners made clear their request that the Court direct preparation of an EIR from the
4 beginning, far before record preparation commenced. On December 1, 2025, the City filed its Petition
5 for Writ of Mandate stating, “the County is obligated to prepare an EIR to address the significant
6 environmental effects of the ‘whole’ Data Center Project ...” (Petition, p. 19, 20.) The First Amended
7 Petition and Second Amended Petition reiterated this key issue, for which the record and supplemental
8 record were developed to address. The City’s Second Amended Petition (“2AP”) Fourth Cause of
9 Action, titled “Environmental Impact Report Required,” detailed for over 20 pages the fair argument of
10 significant impacts that necessitate an EIR and requested a writ requiring an EIR for the Project. (2AP,
11 p. 27-49, 67.) Sierra Club’s Petition for Writ of Mandate, filed on May 28, 2026, before preparation of
12 the supplemental record, likewise argued that an EIR is required and requested such relief. (Sierra Club
Petition, p. 27, 28, 30, 32-46, 60-61.) Thus, IVCN’s claims are contradicted by over eight months of
briefing and record preparation.

13 Second, direction of an EIR is well within this Court’s discretion, as the Tentative correctly
14 notes. (Tentative Decision “TD”, p. 8 [citing *No Oil, supra*, 13 Cal.3d at pp. 75, 83].) This is further
15 established by case law dating back over fifty years. (*County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795,
16 798, 808, 809 [Court explicitly requiring EIR]; *Pistoresi v. City of Madera* (1982) 138 Cal.App.3d 284,
17 289 [finding, “trial court correctly determined the annexation is a ‘project’ subject to CEQA and that
18 there was substantial evidence the annexation might have a significant environmental effect... EIR was
19 thus required”]; *Save the Agoura Cornell Knoll v. City of Agoura Hills* (2020) 46 Cal.App.5th 665, 690-
692 [affirming trial court’s ruling that an EIR was required].)

20 Third, the Objections repeat many allegations regarding the Project’s changing nature to dispute
21 the Tentative Decision’s ordered relief. This Court already considered, and Petitioners addressed, these
22 arguments during briefing and argument. (See Sierra Club Reply Brief, pp. 3, 10 [CEQA requires public
23 process so project changes can be enforced].) The Tentative Decision correctly found that an EIR is
24 required for various reasons not tied to the exact number of natural gas generators—in fact, none of its
25 findings cited “132” generators. (TD, pp. 15-16.) IVCN mischaracterizes the Tentative Decision,
26 claiming it evaluates air quality and hazard “based on ‘132 natural-gas generators.’” (Obj., p. 14.) Yet,
27 the Tentative Decision made clear its analysis considered IVCN’s claims about the changing number of
28 generators (TD, p. 4 [“initially, a 330-megawatt emergency-generator facility with 132 natural-gas

generators”]) and explicitly did not base its findings or relief on an exact number of backup generators.³ (TD, p. 12, 15-16 [“*substantial* backup generation”].) IVCN’s claims are further immaterial given that the Court already found fair argument of various other impacts unrelated to the generators, requiring a full EIR.⁴ IVCN’s remaining self-serving, non-binding claims it will reduce generators, offered only after litigation was brought, have already been addressed by Petitioners and considered by this Court. (Obj., p. 15.) The Tentative Decision properly requires preparation of the EIR for the Project.

B. The Court Issued Proper Relief Under Section 21168.9

IVCN’s remaining objections to the Tentative Decision’s Disposition and Proposed Relief, including to Relief Items 2, 3 and 7 should also be rejected. (Obj., pp. 16-18 [Sections 6.2, 6.4].)

IVCN first claims that Relief Item 7 is overbroad because “[p]rocessing an application changes nothing in the physical world.” (Obj., p. 16.) IVCN misses the key direction in the relief: “the Court enjoins the County from processing any permits for the Project *unless done so as directed in this decision*.” (TD, p. 20, emphasis added.) Thus, the Tentative Decision is clear that the County may process and conduct environmental review for the Project in conformance with this decision. IVCN also claims that this directive “reaches permits the County does not control,” yet the Court specifically identifies it only enjoins the County. (TD, p. 20; Obj., p. 16.) IVCN’s request that Relief Item 7 be narrowed to solely prevent issuance of grading and building permits would enable the very piecemealing that this Court found violated CEQA, as IVCN essentially seems to be asking that the County be allowed to process parts of the Project ministerially. (Obj., p. 16 [referencing transportation permit].)

IVCN further claims that Relief Items 2, 3 and 7 are “unclear.” Yet, the 20-page Tentative Decision provides sufficient detail and findings to support its directive, and even includes eight directives to the County, with several specifically addressing review and processing of permits. (TD, p. 19-20.) Similar relief has been upheld. (*City of Redlands v. County of San Bernardino* 96 Cal.App.4th 398, 415 [upholding trial court command to County “not to readopt General Plan Amendment ... or any similar amendment(s) to the County's General Plan ... without first preparing and considering an [EIR]

³ There is no credible evidence supporting IVCN’s contention that the number of generators was reduced from 132 to 20. The record pages cited by County/IVCN do not substantiate their claim: SAR6053 is, according to the index, an undated power point presentation and SAR19112-19135 are pages from an email to the APCD. Conveniently shifting the project description illustrates the problem that arises when a plot plan is not approved first.

⁴ IVCN’s attempts to diminish the Imperial Irrigation District (“IID”)’s comments on the Project’s significant impacts fail, especially given CEQA requires that agencies like IID, APCD, and DTSC have the opportunity to comment on the EIR. (Guidelines, Section 15086, Obj., p. 15.).)

1 and fully complying with [CEQA].”) The Court of Appeal explained that the language was properly
2 specific and drafted to prevent any attempts of technical compliance with the court's order without
3 remedying the deficiencies raised in this action, and was well within the Court’s jurisdiction under
4 Section 21168.9(b). (*Id.* at 415-417 [“court properly exercised its authority under section 21168.9 in
5 prohibiting the County from engaging in the same or similar unlawful activity”].) For these reasons,
6 IVCN’s other complaints likewise fail and should be rejected.

7
8 **C. If the Court Is Inclined to Modify the Tentative Ruling, Alternative Language Is
9 Offered for the Court's Consideration**

10 The Court should Reject IVCN’s objections and requested edits to the Tentative Decision’s
11 Disposition and Proposed Relief, including to Relief Items 2, 3 and 7. However, if the Court is inclined
12 to revise any of the relief items in response to IVCN’s complaints, including IVCN’s request for more
13 detail on Relief Items 2-3, Petitioners would offer the following suggestions in response to IVCN’s
14 proposed edits.

15 In relation to Relief Item 2, IVCN acknowledges that no grading permit has been issued,
16 but seems to imply that once the “grading approval” conditions are fulfilled, the grading
17 application approval authorizes grading or development of the Project. (Obj., p. 10 [“parties
18 stipulated that no grading permit has been issued, no grading has happened, and none can happen
19 until every condition ... is met...November 3, 2025 action approved an application subject to
20 conditions. It did not authorize anyone to move any dirt. The writ should expressly state this and
21 it should not order the County to undo conditions...”]) Yet, the County confirmed in the June 12,
22 2026 Stipulation of Facts for Trial that a grading permit was never issued or approved, and would
23 be required for the Project before any grading could occur. (Exhibit A, Responses to Request for
24 Admission No. 6-7.) Therefore, if the Court is inclined to modify the tentative ruling, Petitioners
25 offer the following italicized language for consideration for Relief Item 2:

26 **Grading Application Approval.** To the extent the November 2025 grading application approval
27 authorizes or commits the County to permit physical grading or development of the Project before
28 CEQA compliance, that approval shall be set aside. *No grading permit was formally issued as of
the date of the challenged action, and would be required before authorization of any grading or
development for the Project.*

On Relief Item 3, IVCN asks the Court modify its Tentative Decision to “state that the lot
merger and road vacation are not set aside,” on grounds that the Court did not decide on whether
those permits were ministerial or discretionary. (Obj., pp. 17-18, 13.) This basis lacks merit and
should be denied.

1
2 As this Court identified, § 15268(d) requires that “[w]here a project involves an approval
3 that contains elements of both a ministerial action and a discretionary action, the project will be
4 deemed to be discretionary and will be subject to the requirements of CEQA.” Therefore, the
5 County must process the Project’s components as discretionary. This Court’s Tentative Decision
6 further found that “the record establishes an integrated Project involving the merger and vacation
7 decisions,” therefore “Guidelines § 15268(d) precludes treating the whole Project as exempt
8 merely because some component approvals may apply objective criteria.” (TD, p. 14.) The April
9 2026 Notice of Exemption made clear the Lot Merger and Vacation and related approvals were to
10 facilitate the Project. The findings and approvals were all premised on the incorrect notion that the
11 Project is ministerial and not subject to CEQA, and were thus approved ministerially. (See also,
12 Section III(D)(3).) Therefore, if the Court is inclined to modify the tentative ruling, Petitioners
13 offer the following italicized language for consideration for Relief Item 3:

14 **Lot Merger and Related April 2026 CEQA Determination.** The County shall set aside
15 the April 2026 CEQA exemption determination associated with Lot Merger No. 00191
16 and the vacation of Leimgruber Road, including the NOE filed April 8, 2026. *The County*
17 *shall also set aside Resolution Nos. 2026-056, 2026-057, the lot-merger approval, and*
18 *the related appeal determinations.*

19 **D. IVCN Repeats Arguments This Court Already Considered and Rejected, Misreads**
20 **the Tentative, Makes Baseless Claims Without Any Citation, and Disavows Its Prior**
21 **Litigation Stances in an Attempt to Raise Arguments That It Waived**

22 IVCN’s Objections are ultimately a request of the Court for a second bite at the apple, both
23 through briefing and a hearing, primarily based on the same arguments this Court already considered
24 and rejected. Many of IVCN’s claims lack any citation to record evidence or law and should be
25 disregarded. (See *In re Marriage of Falcone & Fyke* (2008) 164 Cal.App.4th 814, 830 [absence of
26 cogent legal argument or citation to authority allows this court to treat the contentions as waived.])

27 **1. Objection 1 Fails**

28 The entirety of Objection 1 is IVCN’s disagreement with the Tentative Decision’s conclusion on
grounds this Court already considered and rejected, with IVCN misreading or ignoring the Tentative
entirely. (Obj., pp. 3-4.) IVCN claims the Tentative Decision “*never* says the County read §§ 9.1011.02
and 92022.03 wrong,” and “*never* points to evidence in the record that cuts the other way” (Obj., pp. 3-
4, emphasis added), ignoring that the Tentative Decision *explicitly* addresses the County’s interpretation
and application of these code sections with multiple record cites. (TD, pp. 13-15.) IVCN disputes the

1 standard of review, while also conceding the Tentative Decision cited the correct standard. (Obj., p. 4:4-
2 5.) IVCN claims the Court missed evidence in “Attachment H,” while acknowledging the Tentative
3 Decision cites to, and rejects, this very document. (Obj., p. 4:8-17.) Petitioners did “show the County got
4 it wrong” (Obj., p. 4) and the Court agreed – the fact IVCN does not like the Court’s conclusions does
5 not negate this.

6 **2. Objection 2 Fails**

7 Objection 2 largely cites case law that this Court already analyzed and applied. (Obj., pp. 5-6;
8 TD, p. 8.) That IVCN disagrees with the Court’s interpretation and application of the case law is
9 immaterial. IVCN further acknowledges the Tentative Decision used the correct standard in its review
10 and record cites. (Obj., p. 6; TD, p. 8, 9.) IVCN repeats many of its prior arguments about the Project’s
11 conditions and standards (Obj. Sections 4.2, 4.4) that this Court already found show discretion is
12 allowed and was in fact exhibited. (TD, p. 13 [finding Public Works conditions and irrigatable standard
13 subjective].) IVCN even acknowledges that Section 91011.03 empowers the County to require
14 conditions to accomplish the “purposes” of the grading chapter, glossing over this completely subjective
15 standard. (Obj., p. 7.) IVCN’s conclusory claims fail to identify any fixed, technical, yes or no checklist
16 standards that are the hallmark of ministerial conditions. (See TD, p., 8.) IVCN’s Objections notably
17 ignore the Tentative Decision’s cited safety requirements generated by the Project (TD, p. 14, 16), and
18 the Fire Department’s required “mitigation analysis.” (SAR 13223-26.) IVCN also doubles down on its
19 rejected argument that the County is powerless to exercise *any* discretion to mitigate the Project’s
20 significant impacts because data centers are “a use the zoning already allows.” (Obj., p. 7, 9 [Section
21 4.5].) This Court, after reviewing the law and record, squarely rejected that claim. (TD, 2 [“zoning alone
22 does not establish that every later data center development is ministerial for CEQA purposes”] p. 8-9.)

23 IVCN’s arguments that grading permits cannot be discretionary and its invocation of Guidelines
24 Section 15268 ignore the Tentative Decision’s citation to *Friends of Westwood*, which addressed similar
25 arguments, including the fact Section 15268 intentionally excluded grading permits from its list of
26 projects presumed ministerial. (Obj., p. 7, 8; TD, p. 8; *Friends of Westwood, Inc. v. City of Los Angeles*,
27 191 Cal. App. 3d 259, 268 [exclusion of grading permits], 280 [dismissing similar speculative claims
28 about wide-ranging impacts if permit found discretionary]; see *also Day v. City of Glendale* (1975)
51Cal.App.3d 817, 822 [finding grading permit discretionary].) Petitioners’ briefing and oral argument
already addressed IVCN’s remaining arguments, and the Court considered and rejected IVCN’s claims.

IVCN’s arguments that *only* DTSC can address contamination (Section 4.3) should not only be
considered waived from its failure to raise them during briefing or trial (Obj., p. 8), they lack any

1 citation or evidence. IVCN claims, “The County grading chapter gives the County *no power* over
2 contamination.” (*Ibid.* emphasis added) Petitioners demonstrated this is false and this Court agreed. (TD,
3 p. 13.) IVCN’s claims that the County has “no power” to ever address a site’s contamination are made
4 without citation to authority, waived, and without merit.⁵

5 Finally, IVCN acknowledges that grading could occur once all conditions of the grading
6 approval are met. (Obj., p. 10, Section 4.6.) As the Tentative Decision explained, “Guidelines § 15378
7 defines a project as the whole of an action that may result in a direct or *reasonably foreseeable indirect*
8 *physical* change in the environment.” (TD, p. 9.) Thus, the Court properly set aside the grading approval.

9 **3. Objection 3 Fails**

10 IVCN claims that the Lot Merger and Road Vacation must be found discretionary to be set
11 aside. (Obj., p. 10.) As the Tentative Decision correctly identified (TD, p. 14), Guidelines Section 15268
12 (d) is directly on point and plainly requires: “Where a project involves an approval that contains
13 elements of both a ministerial action and a discretionary action, the project will be deemed to be
14 discretionary and will be subject to the requirements of CEQA.” IVCN’s arguments that the Lot Merger
15 and Vacation are ministerial (Sections 5.3-5.4) are not only immaterial, they are repeated from the
16 briefing and Petitioners already identified how both are discretionary. (Sierra Club Opening Brief, pp.
17 13-15). The Court already considered these arguments.

18 IVCN’s arguments regarding the Class 5 exemption and unusual circumstances⁶ (Obj. Section
19 5.5) likewise do not change the Tentative Decision’s findings. (TD, p. 17.) IVCN falsely claims the
20 Court applied the fair-argument test at the “first step” (Obj., p. 14), yet the Court cited “evidence” of
21 unusual circumstances (not a “fair argument”) as well as *Berkeley Hillside Preservation v. City of*
22 *Berkeley II* (2015) 60 Cal.4th 1086, 1110-1116—the exact test IVCN is requesting be applied. The
23 Court also referenced Petitioners’ findings, who further detailed and applied the test in the briefing. (TD,
24 p. 17). IVCN had the opportunity to defend the Class 5 exemption and respond to Petitioners’ evidence
25 and arguments on these issues during briefing, but explicitly chose not to. (Opposition, p. 30 [declining
26 to address categorical exemption arguments claiming “County’s additional, alternative reference to the
27 Class 5 exemption in the Lot Merger NOE is surplusage”].) It should be considered as having waived its
28

26 ⁵ IVCN again claims it “decided to avoid the toxic area,” yet Petitioners showed otherwise during
27 briefing. (Sierra Club Objections to Respondents’ Request for Judicial Notice, pp. 4-5.)

28 ⁶ IVCN does not contest the Tentative Decision’s finding that the cumulative impacts exception applies,
rendering its Class 5 arguments moot.

1 ability to dispute these arguments. That IVCN now disagrees with the Court's conclusion is immaterial.
2 IVCN's Objections offer nothing new.

3 **4. Objection 4 Fails**

4 As described above in Section III (A), (B), IVCN's complaints about the Tentative Decision's
5 relief fail and should be rejected. Petitioners address IVCN's requests for the Tentative to address the
6 remaining non-CEQA claims in Section IV.

6 **5. Objection 5 Fails**

7 IVCN wants it both ways. It asks the Tentative Decision to keep findings about the 2017 zoning
8 it likes (Obj., p. 1), while asking the Court to remove findings it does not like, with no reasoned basis.
9 (Obj., p. 18.) IVCN's objections are repeated from the briefs, which the Court analyzed along with the
10 record evidence and Stipulated Facts, and came to correct decision in its Tentative Decision. IVCN even
11 now disavows the case law it initially tried to invoke, because it dislikes the Court's interpretation and
12 application of that law. (Obj., p. 19 [*Wal-Mart, Lucas, and Hilltop*].) The Tentative Decision's 2017
13 Negative Declaration findings are relevant to the analysis and should be kept in the Final Decision. (TD,
14 Sections (V)(A)-(B).)

14 **IV. THE COURT DID NOT FIND THAT DATA CENTER USES NEVER REQUIRE** 15 **CONDITIONAL USE PERMITS; PETITIONERS' RESPONSE IF COURT DECIDES TO** 16 **ISSUE STATEMENT OF DECISION**

16 IVCN contends that the Court proposes to decide that data centers are permitted uses in the M-1
17 and M-2 zones and never need a conditional use permit. (Obj., p. 1, 17) Petitioners did not read the
18 Court's tentative decision as resolving that issue; rather, they understood it to be among the non-CEQA
19 issues the Court declined to address.⁷ If the Court decides to address the non-CEQA issues as requested
20 by IVCN, Petitioners request the Court consider the following, as detailed in Petitioners' briefs:

- 21 • Only uses specifically listed in the Code are permitted. (ICMC, §§90501.06(A)(1), 90101.05(A)-
22 (E), 90501.06(A)(1).) Uses not specifically listed are strictly prohibited. (ICMC, §§90508.03,
23 90515.03, 90516.03.)
- 24 • Listed facilities, including the Project, are only permitted "[p]rovided that such facilities do not
25 omit fumes, odor, dust, smoke or gas beyond the confines of the property line within which their
26 activity occurs, or produces significant levels of noise or vibration beyond the perimeter of the
27 site." (ICMC, §90516.00; ICMC, §90515.00.) This confers additional discretion on the County.
- 28 • ICMC Section 90515.01(bbb) only permits a "Data center (within enclosed building)" in the M-1
zone. The Project, however, includes components outside of the building. (AR2062.) A data
center yard—including the space for a BESS and substation—is only permitted in the M-1 zone
with a CUP. (ICMC, §90515.02(v).)

⁷ The Tentative Decision states the listing of data centers "does not establish that every approval needed
for this Project is ministerial or that project level environmental review occurred in 2017." (TD, p. 11.)

- The components of a hyperscale data center are not automatically permitted as ancillary or accessory uses. ICMC section 90101.03 provides, “[w]here two or more ordinances, laws or regulations govern the same use or activity the more restrictive law or ordinance shall apply.” The permitted use lists in the Code are more restrictive than the Code provisions for ancillary or accessory uses. Interpreting the Code to allow any use simply by labeling it ancillary or accessory would render the Code’s permitted-use lists superfluous. Under that interpretation, even prohibited uses, such as a nuclear power plant or rendering plant, would be allowed.
- The “ancillary uses” theory further is not permitted in M-1 or A-2, and is only permitted for accessory *structures*—not uses—in the M-2 zone. (ICMC, §90516.01(hh) [M-2].)
- A BESS for a data center is not permitted in the A-2 (not connected to solar) and M-1 and M-2 zones (not listed as a permitted use). (ICMC, §§ 90508.01, 90508.02(j), 90515.01, 90516.01.)
- A water treatment facility or skid is not a permitted use in the M-1 and M-2 zones. (ICMC, §§ 90515.01, 90515.02, 90516.01, 90516.02 [not listed].)
- A non-utility owned substation is not a permitted use because it is not a “utility substation” described in County Code sections 90515.01(vvvvvv) and 90516.01(b). IVCN confirmed its power generation is “non-utility.” (SAR18796.) For IID to take over ownership of the substation, the County was required as part of the Lot Merger to create a separate lot for the substation so that ownership could be transferred to IID. (SAR5143.) The Lot Merger created only a single lot eliminating the possibility of the substation becoming utility owned. (SAR4993.)
- A power generator facility is not a permitted use in the A-2, requires a CUP in the M-1 Zone, and is not listed as a permitted use in the M-2 Zone. (ICMC, §§ 90508.01, 90516.01.)
- The term “data center” was added to the Code in 2017. The County could not have intended data center to include hyperscale AI data centers in 2017 given, as conceded by the County and Real Parties, that the “AI era” made data centers’ role in artificial intelligence clearly known only by December 2023. (Opposition Brief, p. 14.)
- The term “data center” is not defined in the Code. Hyperscale AI data centers are physically distinguishable because they are: (1) composed of thousands of high-density servers that consume 2 to 4 times more energy than traditional computing; (2) require large land masses and enormous building(s) for processing activities; (3) consist of complexes with substations, energy storage (BESS), and on-site generation; and, (4) generate significant noise and intense heat that requires enormous amounts of water for cooling. (AR2063, SAR5080-86, 13665-68, 13670-96, 13698-04, 13905-07, 13909-21, 14117-25, 14131-42.) As the Court recognized in its Tentative Decision, the proposed amendments were described as minor and not addressed in the environmental analysis. (TD, pp. 3, 11.)
- Any other arguments on the non-CEQA issues from Petitioners’ briefs.

V. THE COURT SHOULD REJECT IVCN’S REQUEST FOR SUBSTANTIVE CORRECTIONS BEYOND CLERICAL TYPOGRAPHICAL CORRECTIONS

Petitioners do not object to IVCN’s request to correct the typographical errors on Page 9, line 12; and Page 20, lines 1-2. (Obj., p. 19.)

Petitioners object to IVCN’s request for substantive changes to Page 4, line 1. As Petitioners argued in their briefs and herein, IVCN’s claims that its prior project plans have been “superseded” are nonbinding, unproven, and irrelevant. Petitioners also object to IVCN’s request for substantive changes

1 to Page 13 lines 4-8. (Obj. p. 19.) IVCN proposes changes far beyond clerical typographical corrections.
2 Therefore, the requested changes must be rejected.

3 **VI. THE COURT SHOULD NOT HOLD A SECOND MERITS HEARING**

4 IVCN's request for hearing is primarily to ask the Court to re-litigate the hearing on merits-
5 related arguments this Court has already heard. (Obj., p. 21.) To the extent IVCN requests a hearing on
6 the "form of relief under Section 21168.9," Petitioners believe the Court's relief ordered is proper as
7 described in Section III(A)-(B) and thus no hearing is necessary at this time. The Court already ordered
8 the Parties to meet and confer and submit a proposed writ and judgment. Petitioners request that the
9 Court uphold its Tentative Decision and issue its final ruling.

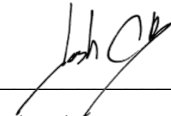
10 **VII. CONCLUSION**

11 For these reasons, Petitioners ask this Court to uphold its tentative, issue its final ruling, and
12 deny IVCN's request for statement of decision and request for hearing.

13 Dated: September 8, 2026

Respectfully submitted,

14 CHATTEN-BROWN LAW GROUP

15 By:  _____

16 Josh Chatten-Brown
17 Kathryn Pettit
18 Isabella Coye
19 Attorneys for Intervening Petitioner
20 SIERRA CLUB

21 CITY OF IMPERIAL

22 By:  _____

23 Alene Taber
24 Attorney for Petitioner City of Imperial

1 **PROOF OF SERVICE**

2 I am employed by Chatten-Brown Law Group in the County of San Diego, State of California. I
3 am over the age of 18 and not a party to the within action. On September 8, 2026, I served the following
4 documents:

5 **PETITIONERS SIERRA CLUB AND CITY OF IMPERIAL'S**
6 **JOINT OPPOSITION TO REAL PARTIES' FIRST AND AMENDED**
7 **OBJECTIONS TO TENTATIVE DECISION AND RELATED REQUESTS**

8 ☐ **VIA UNITED STATES MAIL.** I am readily familiar with this business' practice for
9 collection and processing of correspondence for mailing with the United States Postal
10 Service. On the same day that correspondence is placed for collection and mailing, it
11 is deposited in the ordinary course of business with the United States Postal Service in
12 a sealed envelope with postage fully prepaid. I enclosed the above-referenced
13 document(s) in a sealed envelope or package addressed to the person(s) at the
14 address(es) as set forth below, and following ordinary business practices I placed the
15 package for collection and mailing on the date and at the place of business set forth
16 above.

17 ☐ **VIA OVERNIGHT DELIVERY.** I enclosed the above-referenced document(s) in
18 an envelope or package designated by an overnight delivery carrier with delivery fees
19 paid or provided for and addressed to the person(s) at the address(es) listed below. I
20 placed the envelope or package for collection and overnight delivery at an office or a
21 regularly utilized drop box of the overnight delivery carrier.

22 ☒ **VIA ONE LEGAL E-SERVICE.** By submitting an electronic version of the
23 document(s) to One Legal, LLC, through the user interface at www.onelegal.com.

24 ☐ **VIA ELECTRONIC SERVICE.** Based on a court order or an agreement of the
25 parties to accept service by electronic transmission, I caused the above-referenced
26 document(s) to be sent to the person(s) at the electronic address(es) listed below.

27 I declare under penalty of perjury under the laws of the State of California that the above is true
28 and correct. Executed on September 8, 2026, at San Diego, California.

29 
30 Jaclyn Salamony

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