

1 ALENE TABER LAW, APC  
2 ALENE M. TABER, SBN 218554  
3 1820 West Orangewood, Suite 105  
4 Orange, California 92868  
5 Telephone: 949.678.8464  
6 alene@alenetablerlaw.com

7 Attorneys for Plaintiff and Petitioner  
8 CITY OF IMPERIAL

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**ELECTRONICALLY FILED**  
Superior Court of California,  
County of Imperial  
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Assigned for All Purposes Including Trial To:  
Hon. L. Brooks Anderholt

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF IMPERIAL

11 CITY OF IMPERIAL, a general law city  
12 Petitioner and Plaintiff,

13 vs.

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

18 Respondents and Defendants.

CASE NO. ECU004457

**VERIFIED PETITION AND COMPLAINT  
BY THE CITY OF IMPERIAL FOR: (1)  
WRIT OF MANDATE [CODE CIV.  
PROC., § 1085 AND PUB. RES. CODE, §§  
21168.5 AND 21168.9]; (2) WRIT OF  
ADMINISTRATIVE MANDAMUS [CODE  
CIV. PROC., § 1094.5 AND PUB. RES.  
CODE, §§ 21168 AND 21168.9]; (3)  
DECLARATORY RELIEF; AND (4)  
INJUNCTIVE RELIEF**

19 IMPERIAL VALLEY COMPUTER  
20 MANUFACTURING, LLC, a California  
21 Limited Liability Company; DUBOSE  
22 DESIGN GROUP, INC., a California  
23 General Stock Corporation; JESUS  
24 BARRIGA, an individual; ROBERTO  
25 BARRIGA, an individual; ATEN  
26 PROPERTIES, LLC, a California Limited  
27 Liability Company; HERMENEGILDA  
28 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

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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

1 **INTRODUCTION**

2 1. The County of Imperial approved a grading permit BP# 63316 (“Grading Permit”)  
3 for a Data Center Complex almost one million square feet in size. Data centers are physical  
4 facilities that house computing and networking equipment, such as servers, storage systems, and  
5 routers, to store, process, and distribute data. The Data Center Complex is proposed to be located  
6 at the intersection of Aten and Clark Roads in the unincorporated County area. The Data Center  
7 Complex would be located adjacent to two residential neighborhoods and a fuel tank farm that  
8 are located within the City of Imperial’s (“City”) jurisdiction.

9 2. The City is not opposed to the responsible development of data centers in Imperial  
10 County that are the subject of a robust and transparent public process. However, this Data Center  
11 Complex is being developed via a serial ministerial approval process in the absence of compliance  
12 with the California Environmental Quality Act (“CEQA”). This process lacks the essential  
13 safeguards necessary to ensure the public is protected and that the impacts caused by the Data  
14 Center Complex is mitigated.

15 3. The public has a right to know and be fully informed about the full scope of the  
16 Data Center Complex proposed to be located near their homes, understand the potential  
17 environmental impacts, be afforded an opportunity for meaningful comment, engage in dialog  
18 with a receptive County administration, and for modifications to made to the Data Center  
19 Complex to lessen any serious impacts.

20 4. The City has attempted to reach agreement with the County about establishing the  
21 appropriate public process, requiring discretionary permits, and analyzing and mitigating the  
22 impacts under CEQA. The City also requested the parties enter into a tolling agreement to provide  
23 additional time for the parties to discuss the issues and avoid the need for the filing of a lawsuit.  
24 To date, the parties have not been able to reach an agreement. In order to protect its residents and  
25 without a tolling agreement in place the City had no choice but to initiate this litigation.

26 **JURISDICTION AND VENUE**

27 5. This Court has jurisdiction over the writ actions under sections 1085 and 1094.5  
28 of the Code of Civil Procedure, and sections 21168 and 21168.5 of the Public Resources Code.



1 performance of their duties, direct and control litigation to which the County is a party, and  
2 exercise the County's powers and authorities including the County's approval of the Data Center  
3 Complex and the Grading Permit. (Gov. Code, §§ 23005, 25203, 25303.)

4 13. Real Party in Interest IMPERIAL VALLEY COMPUTER MANUFACTURING,  
5 LLC ("IVCM") is a California Limited Liability Company. IVCM applied for and received the  
6 Grading Permit from the County and is the developer of the Data Center Complex.

7 14. Real Party in Interest DUBOSE DESIGN GROUP, INC. ("Dubose") is a  
8 California General Stock Corporation. Dubose applied for and received the Grading Permit from  
9 the County and is the developer of the Data Center Complex.

10 15. Real Party in Interest JESUS BARRIGA, an individual, is the owner of property  
11 identified by Assessor's Parcel Number 044-220-007 and 2304 Clark Road where the Data Center  
12 Complex is proposed to be located. Mr. Jesus Barriga signed an owner's affidavit granting  
13 permission to Real Parties in Interest IVCM and Dubose to apply for permits from Imperial  
14 County to construct the Data Center Complex on his property.

15 16. Real Party in Interest ROBERTO BARRIGA, an individual, is also the owner of  
16 property identified by Assessor's Parcel Number 044-220-007 and 2304 Clark Road where the  
17 Data Center Complex is proposed to be located.

18 17. Real Party in Interest ATEN PROPERTIES, LLC is a California Limited Liability  
19 Company that owns properties identified by Assessor's Parcel Numbers 044-220-045, 044-220-  
20 044, and 044-220-042 and 291 West Aten Road. Ryan Dickerson, identified as a member of Aten  
21 Properties, LLC signed an owner's affidavit granting permission to Real Parties in Interest IVCM  
22 and Dubose to apply for permits from Imperial County to construct the Data Center Complex on  
23 this property.

24 18. Real Party in Interest HERMENEGILDA LEIMGRUBER, AS TRUSTEE OF  
25 THE MAX AND HERMENEGILDA LEIMGRUBER LIVING TRUST SURVIVOR'S TRUST,  
26 U/A DATED AUGUST 14, 2024 owns property identified by Assessor's Parcel Number 044-  
27 220-046 and 291 West Aten Road. Hermenegilda Leimgruber, Trustees of the Max and  
28 Hermenegilda Leimgruber Living Trust Survivor's Trust, U/A dated Aug. 14, 2024 signed an

1 owner's affidavit granting permission to Real Parties in Interest IVCM and Dubose to apply for  
2 permits from Imperial County to construct the Data Center Complex on this property.

3 19. Real Party in Interest DARYL DICKERSON AND HEATHER DICKERSON, AS  
4 TRUSTEES OF THE DARYL AND HEATHER DICKERSON FAMILY TRUST UNDER  
5 DECLARATION OF TRUST DATED APRIL 21, 2009 owns property identified by Assessor's  
6 Parcel Number 044-220-042, 044-220-045, 044-220-044 and 291 West Aten Road where the Data  
7 Center Complex is proposed to be located.

8 20. Real Party in Interest JAMES A. SANDERS JR., AND STEPHANIE A.  
9 SANDERS AS TRUSTEES OF THE JAMES A. AND STEPHANIE A. SANDERS FAMILY  
10 TRUST DATED JULY 27, 2009 owns property identified by Assessor's Parcel Number 044-220-  
11 042, 044-220-045, 044-220-044 and 291 West Aten Road where the Data Center Complex is  
12 proposed to be located.

13 21. Real Party in Interest RYAN DICKERSON, an individual, owns property  
14 identified by Assessor's Parcel Number 044-220-042, 044-220-045, 044-220-044 and 291 West  
15 Aten Road where the Data Center Complex is proposed to be located.

16 22. Respondents and Defendants DOES 1 through 20, inclusive, are sued under  
17 fictitious names. Petitioner is ignorant of the true names and capacities, whether individual,  
18 corporate, governmental, or otherwise, of the Respondents and Defendants named in this Petition  
19 as DOES 1 through 20, inclusive, and therefore sues these Respondents and Defendants by these  
20 fictitious names. Petitioner will amend this Petition to allege their true names and capacities when  
21 ascertained.

22 23. Real Parties in Interest ROES 1 through 20, inclusive, are sued under fictitious  
23 names. Petitioner is ignorant of the true names and capacities, whether individual, corporate,  
24 governmental, or otherwise, of the Real Parties in Interest named in this Petition as ROES 1  
25 through 20, inclusive, and therefore sues these Real Parties in Interest by these fictitious names.  
26 Petitioner will amend this Petition to allege their true names and capacities when ascertained.

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**STATEMENT OF FACTS**

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2           24.     Petitioner re-alleges and incorporates by reference the preceding paragraphs in  
3 their entirety, as though fully set forth herein.

4           25.     Real Parties in Interest IVCN and Dubose (collectively “Applicants”) seek to  
5 develop the Data Center Complex in unincorporated Imperial County at the intersection of Aten  
6 and Clark Roads. The proposed Data Center Complex is proposed to be located on five parcels  
7 identified as Assessor Parcel Numbers 044-220-007, 044-220-042, 044-220-044, 044-220-045,  
8 and 044-220-046 (collectively, the “Property”).

9           26.     This Property is located within the City’s sphere of influence. A sphere of  
10 influence is a crucial planning boundary that designates the probable future physical boundaries  
11 and service area of the City and zoning of the properties to guide growth and ensure the City has  
12 capacity for public facilities and services for the area. LAFCO approved the sphere of influence  
13 and Service Area Plan on June 26, 2025.

14           27.     The City understands that the Data Center Complex includes the following on-site  
15 and off-site components:

- 16           a. 950,000 square foot data center building, one story and 35 feet high with 180  
17           parking spaces
- 18           b. Large-scale battery energy storage system (“BESS”) composed of Tesla  
19           Megapacks supplying 862 megawatt hour (“MWh”)
- 20           c. Electrical substation for 250-500 MW
- 21           d. Cooling towers
- 22           e. 100 natural gas powered backup emergency generators connected to Southern  
23           California Gas Company’s high pressure gas line located on Aten Road for  
24           continuous fuel supply to provide 330 MW of emergency power
- 25           f. Retention basin
- 26           g. Four 500,000 gallon storage tanks for water
- 27           h. On-site wastewater treatment center to treat some of the wastewater generated on  
28           the site and construction of a new line to convey untreated wastewater to IID’s

1 central drain

- 2 i. Dedicated conveyance system for reclaimed water that may require new plant  
3 upgrades
- 4 j. Transmission interconnection to IID's 230kV "S" Line between IID's El Central  
5 switching station and San Diego Gas & Electric's Imperial Valley substation
- 6 k. Transmission interconnect to IID's 92 kV "R" Line

7 Collectively, these components are referred to as the "Data Center Project."

8 28. Because the Data Center Project is located within the City's future service area,  
9 discretionary approvals will be needed from the City that are integral to the Project. For example,  
10 the Applicants requested the City provide reclaimed water. In response, the City may consider  
11 whether to upgrade its water system to provide the requested reclaimed water and whether to enter  
12 into a service and infrastructure funding agreement with the Applicants to do so.

13 29. The Property has several different zoning designations under the County  
14 Municipal Code, specifically A-2U [General Agricultural within Urban Boundaries], M2-U  
15 [Medium Industrial within Urban Boundaries], and M-1-N-U [Light Industrial, No Residential  
16 within Urban Boundaries]. The Property is overlaid with the "U" zone designating it as a urban  
17 area. The Data Center Project is proposed to be located on this multi-zoned Property. (ICMC, §  
18 90501.08.)

19 30. In May 2025, Imperial Irrigation District's ("IID") Transmission Planning  
20 Department prepared a feasibility study for the Data Center Project ("Feasibility Study"). The  
21 Feasibility Study was prepared in response to a request from IVCM for the interconnection of the  
22 Data Center Project to the IID System at the 230kV 'S' line between IID's El Centro switching  
23 station ("ECSS") and San Diego Gas & Electric's ("SDG&E") Imperial Valley substation.

24 31. The Feasibility Study concluded that at a 500 MW load thermal and voltage  
25 violations were found under the following outage: "P1: Loss of 230kV 'S' One between 2320 kV  
26 Imperial Valley Substation and 230 kV IVCM Substation."

27 32. In July 2025, IID Transmission Planning Department prepared a system impact  
28 study for the Data Center Project ("System Impact Study"). The System Impact Study was

1 prepared in response to a request from IVCM for the interconnection of the Data Center Project  
2 to the IID System at the 230kV 'S' line between IID's ECSS and SDG&E's Imperial Valley  
3 substation. As part of this System Impact Study, the IID evaluated the interconnection of 250 MW  
4 of load to assess potential system impacts and infrastructure requirements.

5 33. IID deemed the Data Center Project feasible under the System Impact Study.  
6 However, IID assumed for both the Feasibility Study and System Impact Study that the majority  
7 of the power required to serve the load demanded by the Data Center Project would be imported  
8 because IID concluded that it did not have the capability to reliably support a large-scale load  
9 requiring continuous 24-hour service with existing resources. IID did not commit to serve the  
10 requested load

11 34. The Applicants also requested IID conduct a System Impact Study for the  
12 transmission interconnect to IID's 92 kV 'R' Line. It is not known whether this study was  
13 conducted or a feasibility study, and if so, the results.

14 35. In July 2025, Real Parties in Interest IVCM and Dubose applied to the County  
15 Planning and Development Services Department for a Design Review-Commercial (#25-0006),  
16 a permit identified as BP#63145, and a permit to grade the Property in order to construct the Data  
17 Center Project. At the time of the application, Real Parties in Interest IVCM and Dubose were not  
18 the Property owners and obtained affidavits from the Property owners granting permission for the  
19 Applicants to apply for entitlements, site plans, a lot merger, and building permits. The Applicants  
20 assert that the Data Center Project is permitted "by right", may be entirely approved by the County  
21 via a ministerial process, and is exempt from CEQA.

22 36. In a letter dated September 4, 2025, County Planning and Development Services  
23 Department informed IVCM that the Data Center Project was a permitted use within the M-1 zone  
24 and that the utility substation and transmission line are permitted in A-2 zoning. The County  
25 pointed out that because the Data Center Project was situated on differently zoned parcels and  
26 crossed the boundary of three zoning areas, "some of the identified uses in the layout are not fully  
27 consistent with building code requirements relating to construction across property lines." The  
28 County provided two options to satisfy the building code requirements: (1) revise the site layout

1 so that each structure would be located entirely within a specific parcel where the use is permitted;  
2 or, (2) submit a lot merger and lot line adjustment applications to configure the boundary limits.  
3 In addition, the County offered to rezone the entire Property as M-1 zoning as part of the lot  
4 merger approval. The County also informed IVCM that the proposed parking plan did not meet  
5 the minimum requirements and that a variance application was required to deviate from the  
6 standards. The County sought additional information about the water tanks and proposed water  
7 demand, the water treatment skid and cooling yard, landscaping plan, irrigation plan, and trash  
8 enclosures.

9 37. The status of the Design Review-Commercial (#25-0006) and the permit identified  
10 as BP#63145 is unknown.

11 38. In July 2025, IVCM applied to the Imperial County Air Pollution Control District  
12 (“APCD”) for a permit for the construction of a backup generator building that would host 100  
13 Caterpillar G3520 Emergency Natural Gas Generators (“Back Up Generator Permit”). IVCM  
14 asserts that Best Available Control Technology (“BACT”) and emission offsets are not required.

15 39. In August 2025, the APCD informed IVCM that its application was incomplete.  
16 Because the Back Up Generator Permit had a preliminary prioritization score higher than 10 in a  
17 million per a screening assessment as part of the AB2588 “Hot Spots” program, a health risk  
18 assessment (“HRA”) and air quality study were required. The status of the APCD permit is  
19 unknown.

20 40. On November 3, 2025, the County issued the NOE for the Grading Permit. The  
21 County concluded that the Grading Permit was exempt from CEQA under Public Resources Code,  
22 section 21080(b)(1) and CEQA Guidelines, section 15268 because the Grading Permit was  
23 ministerially approved. The NOE was filed and posted by the County on November 6, 2025.

24 41. It appears that the Applicants decided to address the deficiencies noted in the  
25 County’s September 4, 2025, letter by submitting a lot merger application to reconfigure the  
26 boundary limits. On November 3, 2025, the County sent a request for comments to the City for  
27 the proposed lot merger (Merg00191). The lot merger was described as both consolidating five  
28 individual parcels into a single 74.33 acre site and a 71.14 acre site for the Date Center Project. It

1 is not known which description is accurate. The County also stated its intention to rezone the  
2 entire Property M-1 N-U. The request for comments was accompanied by a lot merger application  
3 that listed the IVCN as the Property owner.

4 42. On November 17, 2025, the City provided the County comments on the lot merger.  
5 The City was unable to provide comprehensive comments because information about the Date  
6 Center Project was omitted. The City requested a clear outline of the entire Data Center Project,  
7 and an understanding of whether there will be a publicly notice public hearing before the County  
8 of Imperial Environmental Evaluation Committee, the County of Imperial Planning Commission,  
9 the County of Imperial Airport Land Use Commission and/or the Planning Director or Board of  
10 Supervisors. The City provided comments regarding City services, traffic and circulation,  
11 environmental review, Airport Land Use Commission review and LAFCO review.

12 43. On November 26, 2025, IVCN submitted a letter to the County responding to the  
13 City's letter. IVCN asserted that the Data Center Project could be permitted with ministerial  
14 permits and was exempt from CEQA, and that the City had no legal rights to make its comments  
15 and requests, and that it had no intention of agreeing to a public process or a tolling agreement.  
16 The City disagrees with IVCN's assertions.

#### 17 **COMPLIANCE WITH CEQA PROCEDURAL REQUIREMENTS**

18 44. Petitioner re-alleges and incorporates by reference the preceding paragraphs in  
19 their entirety, as though fully set forth herein.

20 45. The County filed the NOE on November 3, 2025. This lawsuit is timely filed.  
21 Public Resources Code, section 21167, subdivision (d) provides that a lawsuit shall be  
22 commenced within 35 days from the date of the filing by the public agency of the notice  
23 authorized by subdivision (b) of Section 21152.

24 46. Because the County ministerially approved the Grading Permit for the Data Center  
25 Complex without public notice, there was no opportunity for public comment. Public Resources  
26 Code, section 21177, subdivision (e) creates an explicit exception to CEQA's exhaustion  
27 requirements, stating that the exhaustion provisions "[t]his section does not apply to any alleged  
28 grounds for noncompliance with this division for which there was no public hearing or other

1 opportunity for members of the public to raise those objections orally or in writing before the  
2 approval of the project, or if the public agency failed to give the notice required by law.”

3 47. Petitioner complied with Public Resources Code, section 21167.5 by serving the  
4 County with a notice of intention to commence this action. A copy of that notice is attached as  
5 Exhibit “A”.

6 48. Petitioner complied with Public Resources Code, section 21167.7 by filing a copy  
7 of the notice in Exhibit “A” and this Petition with the California Attorney General.

8 49. Petitioner complied with Public Resources Code, section 21167.4 by concurrently  
9 filing with the Petition a request that the Court set a hearing on this matter.

10 50. Petitioner complied with Public Resources Code, section 21167.6, subdivision  
11 (b)(2) by providing notice to the County that the City is electing to prepare the record of  
12 proceeding and requesting all copies of documents that are required by Public Resources Code,  
13 section 21167.6, subdivision (e).

14 51. Petitioner has no plain, speedy or adequate remedy in the course of ordinary law  
15 unless this Court grants the requested writs and declaratory and injunctive relief. In the absence  
16 of such remedies, the Grading Permit and development of the legally deficient Data Center Project  
17 are without requisite environmental review and in violation of state law and local County  
18 Municipal Code.

19 52. As a further direct and proximate consequence of Respondents’ and Real Parties  
20 in Interest actions, Petitioner retained the services of a law firm to require Respondents comply  
21 with CEQA and the County of Imperial Municipal Code, and other applicable land use plans.

22 **FIRST CAUSE OF ACTION**

23 **(Writ of Mandate and Writ of Administrative Mandamus for**  
24 **Violations of the Imperial County Municipal Code, General Plan, and State Planning and**  
25 **Zoning Law Against All Respondents/Defendants,**  
26 **and DOES 1-20, and ROES 1-20, inclusive)**

27 53. Petitioner re-alleges and incorporates by reference the preceding paragraphs in  
28 their entirety, as though fully set forth herein.

1           54. Applications for land use permits are required to include the signature of the  
2 applicant and if the applicant is not the property owner, then the signature of the owner or an  
3 owner's affidavit. (ICMC, § 90104.00(A).) Every application must include a site plan that  
4 includes all proposed structures below and above ground. (ICMC, § 90104.00(B).) All  
5 applications involving the Subdivision Map Act are required to include a preliminary title report  
6 and information of all parties with a legal interest in the Property. (ICMC, § 90104.00(C).)

7           55. Grading permits may not be issued until an application for a plot plan review has  
8 been submitted to and approved by the Planning and Development Services Department. (ICMC,  
9 § 90301.02.) A plot plan could not be approved by the Planning and Development Services  
10 Department because the Data Center Project is not in compliance with the Municipal Code as  
11 detailed below. (ICMC, § 90101.05.) Therefore, the issuance of the Grading Permit violated the  
12 Municipal Code.

13           56. The Data Center Project is not eligible for ministerial approval. Discretionary  
14 approvals are required, such as a CUP, lot merger, and zone change. These discretionary approvals  
15 require robust public involvement. The Grading Permit could not be issued because the uses  
16 cannot be ministerially approved.

17           57. The County and the Board of Supervisors are required by State Planning, Land  
18 Use, and Zoning Laws to comply with the County Municipal Code when interpreting its  
19 provisions; the County is precluded from adopting interpretations that violate the Municipal Code.

20           58. Municipal Code, section 90508.1 identifies the particular uses that are permitted  
21 in the A-2 zone. A data center is not listed as permitted uses in A-2. No building or structure may  
22 be erected or use established that is not permitted in the zone. (ICMC, § 90501.06(A).) Municipal  
23 Code, section 90508.02 provides that a BESS is permitted in the A-2 zone with a CUP only if it  
24 is connected to an existing electrical power generation plant, which is not the case. Municipal  
25 Code, section 90508.03 states that “[a]ll other uses not expressly permitted by Section 90508.01  
26 or 90508.02 are prohibited. Therefore, the Data Center Project including the BESS are not  
27 permitted uses on those portions of the Property zoned A-2.

28           59. Municipal Code section 90515.00 states that the purpose of the M-1 zone “is to

1 designate areas for wholesale commercial, storage, trucking, assembly type manufacturing and  
2 other similar light industrial uses. Processing or fabrication is limited to activities conducted  
3 entirely within a building, that does not emit fumes, odor, dust, smoke or gas, beyond the confines  
4 of the building within which the activity occurs, or produces significant levels of noise or vibration  
5 beyond the perimeter of the building.”

6 60. Municipal Code, section 90515-01 identifies a data center within an enclosed  
7 building as a permitted use in M-1. However, a BESS, electrical power generation plant,  
8 transmission interconnection, substation, and data center yard require a CUP in M-1.

9 61. Municipal Code section 90516.00 states that the purpose of the M-2 zone “is to  
10 designate areas for wholesale commercial, storage, trucking, assembly type manufacturing,  
11 general manufacturing, research and development, medium intensity fabrication and other similar  
12 medium intensity processing facilities. The processing or fabrication within any of these facilities  
13 is to be limited to activities conducted either entirely within a building or within securely fenced  
14 (obscured fencing) areas. Provided further that such facilities do not omit fumes, odor, dust,  
15 smoke or gas beyond the confines of the property line within which their activity occurs, or  
16 produces significant levels of noise or vibration beyond the perimeter of the site.”

17 62. Municipal Code, section 90516-01 identifies a data center within an enclosed  
18 building as a permitted use in M-2. However, a BESS, electrical power generation plant,  
19 transmission interconnection, and substation require a CUP in M-2.

20 63. A CUP is a discretionary permit “consists of a limited entitlement that requires a  
21 decision-making body to approve a use subject to conditions or disapprove a particular use, and  
22 is in the best interest of public convenience and necessity.” (ICMC, § 90203.01.) The use must  
23 conform to the General Plan. (ICMC, § 90203.02.) The CUP must be the subject of a public  
24 hearing and approved by the Planning Commission. (ICMC, §§ 90203.06, 90203.08-09.) The  
25 Applicants have not been granted the requisite CUP and therefore, the Grading Permit should not  
26 have been issued.

27 64. In order to approve the CUP, the Planning Commission is required to find that the  
28 “proposed use will not be detrimental to the health, safety, and welfare of the public or to the

1 property and residents in the vicinity.” (ICMC, § 90203.9.) The Data Center Project as proposed  
2 is inconsistent with the purpose of the M-1 and M-2 zones which is to limit activities to within a  
3 building, and to permit uses that do not emit fumes, odor, dust, smoke or gas, beyond the confines  
4 of the building or produces significant levels of noise or vibration beyond the perimeter of the  
5 building. Further, the Data Center Project will cause impacts to the health, safety, and welfare of  
6 the residents in the vicinity.

7 65. The Grading Permit and Data Center Project as proposed cannot be approved  
8 without a lot merger. The requested lot merger is a discretionary permit. The Planning Director is  
9 required to conduct a noticed public hearing and make findings. (ICMC, § 90808.03.)

10 66. Among other things, the lot merger is required to conform to State law. There are  
11 discrepancies as to the ownership of the properties. According to the lot merger application,  
12 IVCN attested that it was the sole legal owner of the Property. However, the certification of  
13 ownership on the lot merger application contradicts the application to the County for the Grading  
14 Permit that was accompanied by owner’s affidavits from three different landowners none of which  
15 were IVCN. The County may only authorize the merger of contiguous parcels that are under  
16 common ownership. (Gov. Code, § 66499.20.3.) If the Property ownership certification on the lot  
17 merger application is inaccurate the County cannot approve the lot merger.

18 67. The Municipal Code, section 90501.01 provides that every parcel shall be  
19 classified in only one base zone. The Property cannot be merged without an accompanying  
20 rezoning because the parcels have three different zones. The Municipal Code, section 90204.01  
21 defines a change of zone as: the classification, and/or the re-classification of the zoning of  
22 property; and/or changes in the permitted uses or regulations on property within particular land  
23 use categories.

24 68. The Applicants propose to change the zoning of the parcels currently designated  
25 as A-2 and M-2 to M-1. This qualifies under the Municipal Code as a rezoning. Rezoning is a  
26 discretionary action that must be reviewed by the Planning Commission and approved by the  
27 Board of Supervisors following a noticed public hearing. (ICMC, §§ 90204.05-07.) Further, the  
28 Property must maintain the “U” overlay zoning as the Property is located in the City’s sphere of

1 influence and the Property's General Plan designation is urban area. Neither the Subdivision Map  
2 Act nor the County Municipal Code permits the rezoning of the Property through a lot merger  
3 approval.

4 69. Every request for a change of zone must be found to be consistent with the  
5 County's General Plan. (ICMC, § 90204.02.) The rule of general plan consistency is established  
6 by adopted California Planning and Zoning Laws and requires projects to be compatible with the  
7 objectives and policies of the adopted County General Plan.

8 70. A project is inconsistent if it conflicts with a general plan policy that is  
9 fundamental, mandatory, and clear. (*Families Unafraid to Uphold Rural Etc. County v. Board of*  
10 *Supervisors* (1998) 62 Cal.App.4th 1332, 1341-42.) The most fundamental policies pertain to  
11 Land Use.

12 71. The Municipal Code, section 90501.08 provides with respect to "U" zone parcels,  
13 that "[w]ith regard to urban areas around incorporated cities, it is the intent of the county of  
14 Imperial to adhere to the standards, rules, regulations and ordinances of said urban jurisdiction.  
15 To that end, the board of supervisors directs staff to work with their respective counterparts in the  
16 urban area and to use to the extent feasible and possible the urban area regulations in  
17 implementing any proposed land use action." The County General Plan states that for urbanizing  
18 areas surrounding incorporated cities it is intend to include zoning reclassifications based on the  
19 adopted land use plans of the cities.

20 72. The Property is designated by the City in the General Plan as Rail Served  
21 Industrial. This designation provides for industrial/agricultural uses that require rail access. The  
22 Data Center Project as currently proposed is not compatible with the General Plan designation.  
23 Data centers and BESS are not listed as permitted uses in this zone. Therefore, rezoning the  
24 Property contrary to the uses permitted by the City would be contrary to Municipal Code, section  
25 90501.08 and the General Plan.

26 73. Changing the zone to permit the Data Center Project is inconsistent with the  
27 County General Plan.

28 a. The Data Center Project is inconsistent with the six basic concepts adopted by the

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Board of Supervisors in support of the General Plan: quality of life; safety for people and property; wide selection of social and economic opportunities; efficient use of natural; human and financial resources; clean air, water and land; and quiet, beautiful communities and rural areas.

b. The Data Center Project is inconsistent with Land Use Element, objective 3.1, protecting property and the public health, safety and welfare; objective 4.3, maintaining and requiring compatible land uses within the existing communities; and objective 4.4, limiting the establishment of non-residential uses in predominantly residential neighborhoods.

c. The General Plan prohibits the removal of land from agricultural categories unless for a renewable energy purpose, a mapping error occurred or “where a clear long term economic benefit to the County can be demonstrated through the planning and environmental review process.”

74. The rezoning is not compatible with the objectives and policies of the General Plan therefore would violate California Planning and Zoning Laws.

75. The Data Center Project is located within an area covered by an Airport Land Use Compatibility Plan, Zone C, and required to be consistent with the applicable airport compatibility plan. (ICMC, § 90601.08.) The County Airport Land Use Commission is required to review building permit applications for projects having a valuation greater than \$500,000.00 prior to approval of the project. The City is informed and believes that the Data Center Project has a valuation in excess of \$500,000.00 and therefore, County Airport Land Use Commission review and approval was required before the Grading Permit was issued.

76. The record as described above demonstrates that the County abused its discretion in issuing the Grading Permit. Abuse of discretion occurs when an agency has not proceeded in the manner required by law or if an agency determination is not supported by findings or the findings are not supported by evidence.



1 Cal.App.4th 629, 640.) When a project “involves an approval that contains elements of both a  
2 ministerial action and a discretionary action, the project will be deemed to be discretionary.” (14  
3 CCR § 15268, subd. (d).) The Data Center Project requires numerous discretionary permits and  
4 as such, the Grading Permit could not be declared ministerial.

5 84. The City has subsequent discretionary approval authority over activities that are  
6 integral to the Data Center Project, and as such, maybe designated under CEQA as a responsible  
7 or lead agency. (See e.g., *RiverWatch v. Olivenhain Municipal Water Dist.* (2009) 170  
8 Cal.App.4th 1186, 1206.) Under CEQA lead agencies have mandatory obligations to consult with  
9 responsible agencies before deciding whether a project is exempt from CEQA. (Pub. Res. Code,  
10 § 21080.3(a).) The NOE states that an initial study was prepared for the Data Center Project. As  
11 soon as the County determined that an initial study will be required for the Data Center Project,  
12 the County was required to consult with all responsible agencies. (14 CCR § 15063.) The required  
13 consultation did not occur. Had the County consulted with the City, the City would have objected  
14 to the County’s decision that the Grading Permit for the Data Center Project was exempt from  
15 CEQA, and instead consulted that an EIR was required for the entire Data Center Project.

16 85. CEQA requires the County to prepare an EIR if there is substantial evidence in  
17 light of the ‘whole record’ that there is a fair argument that the project may have a significant  
18 effect on the environment (Pub. Res. Code, § 21080(d)). The record demonstrates that, among  
19 other things, the Data Center Project has the potential to cause significant impacts, including but  
20 not limited to:

- 21 a. Safety hazards (due to its propensity to deflagrate and release toxic gases) to  
22 nearby residences resulting from fires, explosions, and toxic and hazardous  
23 emissions from electrical failures, equipment overheating, etc. There is a potential  
24 risk of upset to nearby tank farm. These fires can be difficult to extinguish and can  
25 cause evacuations and impacts to emergency response capabilities.
- 26 b. Construction and ground disturbance (building, substation, power lines, water  
27 lines, stormwater, etc.).
- 28 c. Air toxic and criteria pollutant emissions resulting from the operation of 100 gas

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powered backup emergency generators.

- d. Increase in greenhouse gas emissions and the data center complex’s carbon footprint.
- e. Noise and vibration from cooling systems and backup generators, and humming from power systems.
- f. Traffic impacts and changes to traffic circulation.
- g. Storage and handling of hazardous and toxic materials.
- h. Visual and aesthetic impact of large windowless structures, cooling towers, substation, BESS, and transmission equipment.
- i. Potential negative effects on property values.
- j. Use of public funds for large infrastructure investment.
- k. Energy demand could lead to higher energy costs for residents and reliability issues.
- l. Energy demand from equipment; strain on local power grids, potential increase in reliance on fossil fuels.
- m. Heat island effects.
- n. Water usage for cooling and wastewater.
- o. Increased water runoff from more impervious surfaces.
- p. Disposal of electronic components that contain hazardous materials.
- q. Habitat disruption.
- r. Loss of agricultural land.
- s. Failure to comply with the Municipal Code and General Plan goals and policies that were adopted to mitigate environmental impacts.

86. Accordingly, the County is obligated to prepare an EIR to address the significant environmental effects of the “whole” Data Center Project and consider alternatives (such as a different and safer location) and mitigation measures to reduce these significant effects.

1 **THIRD CAUSE OF ACTION**

2 **(Declaratory Relief Against All Respondents/Defendants, and**  
3 **DOES 1-20. and ROES 1-20 inclusive)**

4 87. Petitioner re-alleges and incorporates by reference the preceding paragraphs in  
5 their entirety, as though fully set forth herein.

6 88. An actual controversy has arisen and now exists between the Petitioner and  
7 Respondents relative to their respective rights and duties, in that the Petitioner contends that  
8 Respondents violated CEQA, State Planning and Zoning Laws, the Imperial County Municipal  
9 Code, and the County General Plan.

10 89. Petitioner is informed and believes that Respondents dispute these contentions that  
11 they violated CEQA, State Planning and Zoning Laws, the Imperial County Municipal Code, and  
12 the County General Plan.

13 90. A judicial declaration is necessary and appropriate at this time.

14 91. Petitioner has no adequate or speedy remedy at law, other than that herein prayed,  
15 by which the rights of Petitioner may be determined.

16 **FOURTH CAUSE OF ACTION**

17 **(Injunctive Relief Against All Respondents/Defendants, Real parties in Interest,**  
18 **and DOES and ROES 1-20 inclusive)**

19 92. Petitioner re-alleges and incorporates by reference the preceding paragraphs in  
20 their entirety, as though fully set forth herein.

21 93. Petitioner seeks to enforce the County's Municipal Code, CEQA and State  
22 Planning and Zoning Law. Respondents' failure to comply with these statutes and codes results  
23 in irreparable harm to the Petitioner and the City's residents.

24 94. An injunction is in the public's interest. Irreparable injury can result to the City  
25 and its residents before this lawsuit can be decided on the merits because the Grading Permit for  
26 the Data Center Project has been issued by the County.

27 95. Petitioner has no adequate remedy at law. The injuries resulting from grading the  
28 Property cannot be adequately compensated for by monetary damages, and the grading and

1 construction of the Data Center Project could render subsequent judicial proceedings meaningless.  
2 The injunctive relief requested will redress those injuries.

3 96. Public Resources Code, section 21168.9(a) permits the Court to void project  
4 approvals and suspend project activities. (*Anderson v. Phillips* (1975) 13 Cal.3d 733, 737.)

5 97. A temporary and permanent injunction is necessary and appropriate.

6 **PRAYER FOR RELIEF**

7 In each of the respects enumerated above, Respondents have violated their duties under  
8 law, abused their discretion, failed to proceed in the manner required by law, and decided the  
9 matters complained of without the support of substantial evidence.

10 **WHEREFORE**, Petitioner prays for relief as follows:

11 1. For a writ, commanding Respondents:

- 12 a) To vacate and set aside the County's approval of Grading Permit and issuance of  
13 the NOE;
- 14 b) To set aside and vacate the County's approval of any other permits or approvals  
15 for the Data Center Project;
- 16 c) To set aside and vacate the County's finding that the Grading Permit is exempt  
17 from CEQA;
- 18 d) To set aside and vacate any other CEQA findings made by the County for any  
19 aspect of the Data Center Project; and,
- 20 e) To cease all other approvals associated with the Data Center Project;

21 2. For a declaration that Respondents violated CEQA, the State Planning and Zoning  
22 Laws, the Imperial County Municipal Code, and the County General Plan by approving the  
23 Grading Permit and issuing the NOE;

24 3. For a preliminary and permanent injunction prohibiting and enjoining Respondents  
25 and Real Parties in Interest from taking any action to approve or construct any portion of the Data  
26 Center Project or its components, or to develop or alter the Property in any way unless and until  
27 a lawful approval is obtained from Respondents in accordance with an order of this Court;

28 4. For the Court to retain jurisdiction over this matter until such time as Respondents

1 and Real Parties in Interest have fully complied with their respective duties under the Court's writ  
2 and injunction;

3 5. For such costs and attorneys' fees that Petitioner may be entitled to under the law,  
4 including, but not limited to, California Code of Civil Procedure § 1021.5; and,

5 6. For such additional relief as the Court may deem just and proper.

6 DATED: December 2, 2025

ALENE TABER LAW



9  
10 ALENE M. TABER  
11 Attorneys for Petitioner and Plaintiff  
12 CITY OF IMPERIAL  
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# EXHIBIT A



December 1, 2025

VIA OVERNIGHT MAIL AND EMAIL

Cynthia Medina  
Clerk of the Board  
940 W. Main Street, Suite 209  
El Centro, CA 92243-2839  
cynthiamedina@co.imperial.ca.us

**Subject:** Notice of Intent to Commence a Lawsuit Challenging County of Imperial’s Approval of Grading Permit, BP#63316 for a Data Center Complex to be located at the Intersection of Aten and Clark Roads and the Notice of Exemption (“NOE”)

Dear Ms. Medina:

This firm represents the City of Imperial with regards to the County’s approval of a 950,000 square foot, data center complex that is proposed to be constructed in the middle of two residential neighborhoods and near fuel tanks. You are hereby advised that the City intends to file a lawsuit in the Imperial County Superior Court challenging the approval of a ministerial grading permit (“Grading Permit”) for the data center complex without compliance with the California Environmental Quality Act (“CEQA”) or the opportunity for public review and comment.

The public has a right to know and be fully informed about the full scope of the data center complex proposed to be located near their homes, understand the potential environmental impacts, be afforded an opportunity for meaningful comment, engage in dialog with a receptive County administration, and for modifications to made to the data center complex project to lessen any serious impacts. The City intends to challenge the Grading Permit on several grounds including those described below:

1. The description for the Grading Permit is incomplete and information about the project is contradictory. The Grading Permit is merely one part of a much larger data center complex that includes the following components and approvals that have not been properly included in a comprehensive project approval or analyzed under CEQA:

- a. 950,000 square foot data center

- b. Large-scale battery energy storage system (“BESS”) composed of Tesla Megapacks supplying 862 megawatt hour (“MWh”)
- c. Electrical substation for 330-500 MW
- d. Cooling towers
- e. 100 gas powered backup emergency generators connected to Southern California Gas Company’s high pressure gas line located on Aten Road for continuous fuel supply to provide 330 MW of emergency power
- f. Lot merger to create one or two lots
- g. Rezoning (some parcels appear to have no zoning and others appear to have various zoning (A-2U [General Agricultural within Urban Boundaries], M2-U [Medium Industrial within Urban Boundaries, and M-1-N-U [Light Industrial, No Residential within Urban Boundaries])
- h. Retention basin
- i. Storage tanks for water
- j. On-site wastewater treatment center to treat some of the wastewater generated on the site and a proposal to convey untreated wastewater to IID’s central drain and potential construction of a new line.
- k. Contract with the City for reclaimed water and the construction of a dedicated conveyance system that may require plant upgrades.
- l. If the project proponent intends to obtain reclaimed water from another agency, then approval from the Imperial County Local Agency Formation Commission will be required.
- m. Transmission interconnection to Imperial Irrigation District’s (“IID”) 230kV “S” Line between IID’s El Central switching station and San Diego Gas & Electric’s Imperial Valley substation, and transmission interconnect to IID’s 92 kV “R” Line.

2. None of the above components have independent utility and each component cannot be evaluated separately under CEQA. CEQA compels the County to address the “whole” project to prevent impermissible “piecemealing.” Therefore, the Grading Permit project is not individually exempt from CEQA.

3. The data center complex and BESS<sup>1</sup> are not permitted uses in A-2U. A BESS, electrical generation plant, transmission interconnection, and substation requires a CUP in M-1 and M-2, and a data center yard requires a CUP in M-1.

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<sup>1</sup> A BESS is permitted in A-2 with a conditional use permit (“CUP”) only if it is connected to an existing electrical power generation plant, which is not the case.

4. The data center complex project is not eligible for ministerial approval. Discretionary approvals are required, such as a zone change, CUP, and the lot merger. These discretionary approvals require robust public involvement. The County Airport Land Use Commission will also need to review the data center complex project.

5. The Grading Permit and data center complex are not exempt from CEQA under Public Resources Code, section 21080(b)(1) or CEQA Guidelines, section 15268, as it is not ministerial.

6. The data center complex project has the potential to cause significant impacts and an environmental impact report is required.

7. There are discrepancies as to the ownership of the properties. According to the lot merger application, the property is entirely owned by Imperial Valley Computer Manufacturing, LLC. However, the application to the County for the grading permit was accompanied by owner's affidavits from three different landowners none of which were Imperial Valley Computer Manufacturing, LLC. A county may only authorize the merger of contiguous parcels that are under common ownership. (Gov. Code, § 66499.20.3.)

8. The data center complex is not consistent with the County General Plan and provisions regarding urban areas and spheres of influence.

9. Project specific and cumulative impacts that have not be analyzed or mitigated include, but not limited to, the following:

- a. Construction and ground disturbance (building, substation, power lines, water lines, stormwater, etc.)
- b. Air toxic and criteria pollutant emissions resulting from the operation of 100 gas powered backup emergency generators and compliance with appropriate local air district, state and Environmental Protection Agency requirements (e.g., Best Available Control Technology ("BACT"), offsets, etc.)
- c. Increase in greenhouse gas emissions and the data center complex's carbon footprint
- d. Noise and vibration from cooling systems and backup generators, and humming from power systems
- e. Traffic impacts and changes to traffic circulation
- f. Storage and handling of hazardous and toxic materials
- g. Fire, explosions, toxic, and hazardous emissions from electrical failures, equipment overheating; impacts to and risk of upset to nearby tank farm; emergency response
- h. Visual and aesthetic impact of large windowless structures
- i. Potential negative effects on property values

- j. Use of public funds for large infrastructure investment
- k. Energy demand could lead to higher energy costs for residents and reliability issues
- l. Energy demand from equipment; strain on local power grids, potential increase in reliance on fossil fuels (IID concluded that it did not have the capacity to reliably support a large-scale load requiring continuous 24-hour service with existing resources)
- m. Heat island effects
- n. Water usage for cooling and wastewater
- o. Increased water runoff from more impervious surfaces
- p. Disposal of electronic components that contain hazardous materials
- q. Habitat disruption
- r. Loss of agricultural land

This notice is issued in accordance with Public Resources Code, section 21167.5. It is our understanding that the real parties in interest are as follows: Imperial Valley Computer Manufacturing, LLC; Dubose Design Group, Inc.; and, property owners Jesus Barriga, Roberto Barriga, Aten Properties, LLC, and, the Max and Hermenegilda Leimgruber Living Trust Survivor's Trust, U/A dated Aug. 14, 2024. Please let us know if there are other real parties that we have not identified.

We are also aware that there is a lot merger application, Design Review-Commercial application (#25-0006) and a permit application identified as BP#63145 pending with the County Planning and Development Services Department, as well as permit applications with the Imperial County Air Pollution Control District for the data center complex. Would you please inform me whether these applications have been approved, and if so, on what dates, and whether any CEQA documents were issued? Additionally, I would appreciate it if you could provide copies of the final approvals. Please inform us if there are any other pending or approved applications for the data center complex aside from the Grading Permit, lot merger, and air permits.

Pursuant to Public Resources Code, section 21167.8, the City requests that a settlement conference be scheduled within 20 days after the petition is served. The City is not opposed to responsible development of data centers in Imperial County that includes a robust public process. The City believes that many of these issues can be addressed and impacts mitigated. For example, the data center could incorporate an on-site renewable energy component, the buildings could be LEED certified, proactive fire detection, reporting and suppression systems could be installed, and soundproofing materials like acoustic foam and barriers and advanced cooling systems like liquid or immersion cooling could be used to reduce fan noise. The City hopes the parties will reach an

Cynthia Medina  
December 1, 2025  
Page 5

agreement to address the City's concerns about the Grading Permit and overall data center complex and provide for meaningful public involvement. Please contact the City's Manager, Dennis Morita, at (760) 355-4373 to set up the meeting.

Sincerely,



Alene Taber  
Attorneys for City of Imperial

cc: Dennis Morita, City Manager (dmorita@imperial.ca.gov)  
Katherine Turner, Esq., City Attorney (kturner@cityofimperial.org)  
Geoffrey Holbrook, Esq., County Counsel (countycounsel@co.imperial.ca.us)  
Jim Minnick, Planning & Development Services Director (jimminnick@co.imperial.ca.us)  
Gerardo Quero, Planner II (Gerardoquero@co.imperial.ca.us)  
Attorney General's Office (CEQA@doj.ca.gov)

**PROOF OF SERVICE**

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Orange, State of California. My business address is 1820 West Orangewood, Suite 105, Orange, California 92868.

On December 1, 2025, I served true copies of the following document described as **NOTICE OF INTENT TO COMMENCE A LAWSUIT CHALLENGING COUNTY OF IMPERIAL'S APPROVAL OF GRADING PERMIT, BP#63316 FOR A DATA CENTER COMPLEX TO BE LOCATED AT THE INTERSECTION OF ATEN AND CLARK ROADS AND THE NOTICE OF EXEMPTION ("NOE")** on the interested parties as follows:

BY OVERNIGHT MAIL: I caused a copy of the document to be delivered by overnight mail to the following person at the following address:

Cynthia Medina  
Clerk of the Board  
940 W. Main Street, Suite 209  
El Centro, CA 92243-2839

BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused a copy of the document to be sent from e-mail address [alene@alenetaberlaw.com](mailto:alene@alenetaberlaw.com) to the following persons at the e-mail addresses listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

Cynthia Medina, Clerk of the Board ([cynthiamedina@co.imperial.ca.us](mailto:cynthiamedina@co.imperial.ca.us))  
Geoffrey Holbrook, Esq., County Counsel ([countycounsel@co.imperial.ca.us](mailto:countycounsel@co.imperial.ca.us))  
Jim Minnick, Planning & Development Services Director ([jimminnick@co.imperial.ca.us](mailto:jimminnick@co.imperial.ca.us))  
Gerardo Quero, Planner II ([Gerardoquero@co.imperial.ca.us](mailto:Gerardoquero@co.imperial.ca.us))  
Attorney General's Office ([CEQA@doj.ca.gov](mailto:CEQA@doj.ca.gov))

Executed on December 1, 2025, at Huntington Beach, California.



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Alene Taber

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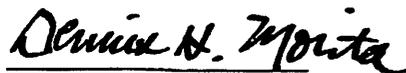
**VERIFICATION**

**STATE OF CALIFORNIA, COUNTY OF IMPERIAL**

I am the City Manager of the City of Imperial, a party to this action, and am authorized to make this verification on its behalf. I have read the foregoing **PETITION AND COMPLAINT BY THE CITY OF IMPERIAL FOR: (1) WRIT OF MANDATE [CODE CIV. PROC., § 1085 AND PUB. RES. CODE, §§ 21168.5 AND 21168.9]; (2) WRIT OF ADMINISTRATIVE MANDAMUS [CODE CIV. PROC., § 1094.5 AND PUB. RES. CODE, §§ 21168 AND 21168.9]; (3) DECLARATORY RELIEF; AND (4) INJUNCTIVE RELIEF (“PETITION”)** and know its contents. I am informed and believe and on that ground allege that the matters stated in the **PETITION** are true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on December 2, 2025, at the City of Imperial, California.



Dennis H. Morita  
City Manager  
City of Imperial