ALENE TABER
LAW

December 26, 2025

VIA EMAIL ONLY

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Subject: **Objections** to the Appeal filed by the Imperial Valley Computer Manufacturing, LLC; **Protective Appeal** of Planning Commission Decision on December 18, 2025, Regarding Lot Merger No. 00191

Dear Ms. Medina and Mr. Minnick:

This firm represents the City of Imperial with regards to Data Center Project proposed to be located at the corner of Aten and Clark Roads and Lot Merger No. 00191 (the "Lot Merger"). The City is filing: (1) objections to the appeal filed by the Imperial Valley Computer Manufacturing, LLC ("IVCM" or "applicant" or "Developers") of Planning Commission Decision on December 18, 2025, regarding Lot Merger No. 00191; and, (2) Protective Appeal to the Planning Commission Decision on December 18, 2025, regarding Lot Merger No. 00191. As explained below, the Board of Supervisors is not legally authorized to consider IVCM's appeal. In the event, the Board proceeds to consider the illegal appeal, the City has also filed this protective appeal[1] to preserve its legal rights to challenge the Planning Commission's decision and have its appeal considered at the same time as the appeal of IVCM. I am authorized by the City to submit these objections and the appeal.

[1] The filing of the protective appeal is not intended to waive the City's objections to the appeal filed by IVCM nor the City's argument as to why the appeal is legally improper.

PART 1: OBJECTIONS TO THE APPEAL FILED BY LVCM

The City of Imperial submits this Objection to any Board of Supervisors' appeal of the Data Center Lot Merger because review by the Supervisors that skips the Planning Commission is a direct violation of the Imperial County Ordinances.

In the paid for, public campaign against the City of Imperial and those citizens that bravely spoke out, data center Developers Sebastian Rucci and Hector Casas openly plead with the Board of Supervisors to uphold "the rule of law and applying the rules as written, without passion or prejudice." The City of Imperial agrees that the rule of law matters and hereby requests that the Board of Supervisors follow the County of Imperial ordinances and comply with the Planning Commission's demand to hold workshops, meet with the City of El Centro and the City of Imperial and then reschedule a Planning Commission meeting on the matter. Simply put, the Planning Commission has only continued the matter. No decision has been made and there is no ability for the Board of Supervisors to bypass their own legal process that requires a Planning Commission hearing.

Below is clarification on the City of Imperial's position on why this matter should not be heard by the Board of Supervisors before it is sent back for workshops and an actual determination, including findings, from the Planning Director or Planning Commission:

(1) Developers wrote in a Desert Review article on December 22, 2025 "[T]he Commission performed its duty admirably, approving the merger by a 5–2 vote, despite significant public pressure."

   a. The Planning Commission did <u>not</u> approve the Lot Merger. The Planning Commission passed the following motion "for the applicant to further discuss the project with the City of Imperial, City of El Centro, and the community before bringing the item back the Planning Commission for consideration." See County Press Release dated December 18, 2025.

   b. No contact has been made with the City of Imperial consistent with the Planning Commission direction.

   c. No additional Planning Commission meeting has been properly noticed or held.

(2) The County of Imperial claims that "An appeal allows the next decision-making body to review the Planning Commission record, consider additional testimony as permitted by County procedures, <u>and take action on the matter</u>." (underline added).

   a. County Ordinance 90102.03(G) strictly prohibits the Board of Supervisors from skipping the Planning Commission.

i. The exact text is: “G. Lot mergers, (appealable to the planning commission and only then the board of supervisors);”

b. County Ordinance 90103.09 states that if the Board of Supervisor hears an appeal and skips receiving a recommendation or decision from the Planning Commission, that decision is “null and void.”

i. The exact text is “The board of supervisors shall not adopt or approve a plan, ordinance, variance, or land use permit without first receiving a report and/or recommendation from the planning commission. If the board does consider and approve such a project without first receiving input from the commission, the project approval shall be deemed null and void, unless the project is determined by the board to be an emergency, on a four-fifth's vote.” (underline added).

c. County Ordinance 90808.3 requires the Planning Director or the Planning Commission to make a decision on a Lot Merger and the CEQA finding associated with that matter. That has not happened as only direction and a demand to bring the matter back to the Planning Commission has occurred.

i. The exact text is “The Planning Director shall conduct a public hearing and approve or deny the lot merger based on consistency with the following determination if the application is categorically exempt under CEQA, or if further environmental documentation is required.”

d. County Ordinance 90101.11 makes it clear that the Planning Director or the Planning Commission is the original body required to make a decision on a Lot Merger and on CEQA. That has not happened.

i. The exact text is:

Permit/Project Type	Hearing Body		
	P/D	P/C	B/S
Lot Merger	X	X	0
Notice of Exemption	X	X	0

P/D = planning director - building official
P/C = planning commission
B/S = board of supervisors
(x) Represents the original hearing body on the specified project.

(0) Represents the body that may hear a project on appeal from decision of the original hearing body.
(-) Represents that there is no appeal hearing at this level.

e. Under no circumstance can a lot merger be approved without a noticed public hearing.

   i. The exact language is: “90808.04 - Hearing scheduling. The Department shall schedule the lot merger for Planning Director Action or Planning Commission by allowing adequate review time for staff and responsible departments/agencies, yet within time limits established by law. Under no circumstances shall a project be heard by the Planning Director without all required noticing having been provided.”

   ii. The exact language of 90808.05 is “The department shall strictly adhere to the following noticing requirement: Refer to Division 1, Chapter 4, Section 90104.03.”

f. The County should not have accepted the application or recommended approval because there are multiple owners and Leimgruber road separates these parcels.

   i. The exact text of County Ordinance 90808.03 is “Under no condition[sic] shall the Department accept an incomplete application and commence processing it, unless and until all necessary information and supporting documentation is provided.”

   ii. The exact text of County Ordinance is: 90808.00 “Merger can only be considered where: “B. The lots or parcels cannot be separated by or affected by an easement, right-of-way, road, alley or canal (including public utility easements).” (underline added).

   iii. The exact text of the state law prohibiting this owner initiated lot merger with different owners is Government Code section 66499.20.3 stating that the County may only “authorize the merger of contiguous parcels under common ownership.”

g. All parcels generally have only one zoning designation. This is referred to as the “single based zoning area” law. The County has adopted this law in 90501.01. When a Lot Merger takes place, it is typical that the zoning is all changed to the exact same zone. There are a few, limited exceptions to this law such as the new, affordable housing laws in California. An exception can only be allowed if a statute authorizes this. Sebastian Rucci quotes the County Ordinance, but leaves out the important element - the parenthetical that states “(A-2, A-3 Traffic corridor)”. There is absolutely no authorization

to keep four different zones on this one parcel, under an owner initiated lot merger except for A-2, A-3 Traffic corridor. An exception does not apply to this property and the Lot Merger should not be approved with different zones. This also does not authorize exception to the many rules listed above.

i. The exact County Ordinance 90501.01, including the parenthetical, reads (underline added):

> Every lot or parcel of land or portion thereof within the unincorporated areas of the county of Imperial shall be classified in only one of the base zoning areas established in this section.
>
> EXCEPTION: Parcels greater than forty (40) acres in net area may be divided by zoning district boundaries <u>(A-2/A-3 Traffic corridor)</u>. Parcels less than forty (40) acres net and currently divided by a zoning boundary shall have the larger of the current designation apply to the entire parcel. Where a zoning map shows two zones on the same parcel the parcel shall have the larger of the two zones applicable to the entire parcel regardless of the map depiction. <u>Unless identified by a community/urban or specific plan area.</u>

h. The most glaring illegal action associated with this data center process is based upon the actual zoning which is directly relevant to this Lot Merger. As set forth in all of the documents related to the data center, the zones all include "-U." Even on the Lot Merger application, Sebastian Rucci wrote that the parcels were zoned as follows:

> Current Zone: A-2 U
>
> Current Zone: M-1 N U
>
> Current Zone: M2-U

The critical "U" zoning designation of this property means this property is directly zoned as "Urban Overlay." This means that it is so close to a City that it is actually required by the County Board of Supervisors Ordinances that the Planning Department work directly with the City of Imperial. Not only must they work with the City of Imperial, there is a strict requirement that the County staff attempt to apply the City of Imperial's code to these lots. The disingenuous comments from the developer that it is the City of Imperial's fault for building homes near an industrially zoned lot ignores the law and shifts blame in a manner that hurts the residents of the City of Imperial. The "U" zone requires the County, not the City's citizens to take

action. Ignoring the “U” zone does not honor what the developer is calling for, “Upholding the Rule of Law in Imperial County.”

i. The exact language of the Imperial County Code on the U Zone is: “90501.08 - "U" zone (urban areas). Land classified in the "U" zone shall also be classified in another zone. The "U" zone is therefore intended to be an overlay zone to designate areas that are within an urban area of an incorporated city or an urban area as designated on the county's general plan. With regard to urban areas around incorporated cities, it is the intent of the county of Imperial to adhere to the standards, rules, regulations and ordinances of said urban jurisdiction. To that end, the board of supervisors directs staff to work with their respective counterparts in the urban area and to use to the extent feasible and possible the urban area regulations in implementing any proposed land use action.” (underline added)

ii. The Planning Commission reviewed the direct zoning of these parcels and appropriately required direct consultation with the City of Imperial and the City of El Centro. Ignoring this determination would not be consistent with the -U Zone as required under local and state law.

i. The County made a public statement that the Board of Supervisors is required to remain neutral. But, Sebastian Rucci has continually provided his own arguments directly to the Board of Supervisors. These have taken the form of paid for advertisements, a letter to a Senator printed in the newspaper and sent directly to each Board of Supervisor member. If neutrality is preferred or a goal of this Board (which the City of Imperial accepts and respects), we request that you disclose any information submitted to you by the developer. We ask that you make each of those communications available for the citizens to see and comment on.

j. The County of Imperial, as all public agencies strive for, speaks about the importance of transparency. We hereby request that the County provide the following:

i. Clarity on the rationale for skipping the Planning Commission. You have appointed and entrusted this body to advise or make certain decisions. They volunteer their time and work to meet the goals you set forth for them in your Ordinances. If you choose to take their motion and clear action and circumvent their demand, please explain this to the public.

ii. Clarity on the data center process. We are aware that there may be an application for or the issuance of a grading permit, there is a Lot Merger application, there may be studies and approvals and reviews

by APCD, traffic studies, building permits etc. We ask that you outline and publish the entire data center process and what steps have been taken so far.

iii. Clarity on past Lot Mergers. Please publish examples of other Owner Initiated Lot Mergers that have kept different zoning in past County approvals.

iv. Clarity on how the County has addressed the -U Zone: Please publish examples of how the County has addressed the -U Zone in the past and any efforts to address the -U Zone on these parcels at issue.

k. The County of Imperial facilitates and implements the Airport Land Use Commission ("ALUC") procedures and Plan. ALUC specifically calls for a compatibility determination on this Lot Merger prior to any approval of the Board of Supervisors. (See ALUC Plan Pages 2-4). The data center project has not been reviewed by ALUC, in violation of the ordinances. As set forth in Appendix D, this property is located in Zone C and the powerlines and the substations are only potential compatible which restrictions. This project clearly requires findings and/or restrictions pursuant to the ALUC Plan.

The County's approach to consideration of this major project can only be described as veiled and inconsistent with past projects. That approach is inviting skepticism, suspicion and even outrage from stakeholders. With true transparency and open review of the project consistent with the County of Imperial rules and practice, an honest conversation with stakeholders can take place.

PART 2: PROTECTIVE APPEAL

In accordance with County Ordinances 90101.10(B), 90102.04, and 90808.06 the City of Imperial hereby appeals the decision of the Planning Commission in the event that the Board of Supervisors considers the applicant's appeal. The information requested by County Ordinance 90101.04 is provided below:

1. The appellant is the City of Imperial.

2. The City of Imperial's address is 420 South Imperial Avenue, Imperial, CA 92251.

3. The appellant is represented by this law firm: Alene Taber Law, 1820 West Orangewood, Suite 105, Orange, California 92868.

4. The City is appealing the Planning Commission's decision made on December 18, 2025 regarding the Lot Merger No. 00191. Specifically, the Planning Commission voted in favor of requesting the applicant to further discuss the Data Center Project with the City of Imperial, City of El Centro, and the community before bringing the

item back the Planning Commission for consideration. The City is appealing the Planning Commission's decision because mere discussion will not resolve the fact that the merger violates the State Subdivision Map Act, the California Environmental Quality Act ("CEQA"), State Planning and Zoning laws, and the County Code and Ordinances. The specific facts, conditions, information, error, or other specifics to warrant appeal are stated in this firm's letter to the Planning Commission dated December 17, 2025, which is attached and incorporated herein as if fully set forth, and as set forth below.

The applicant's response to the City's concerns are unavailing and do not negate the Lot Merger's violations of state and local law.

a. The applicant still falsely certified that IVCM is the property owner on the merger applications. Property owner consents do not expunge this fact.

b. Common ownership is a pre-requisite to a lot merger, not an after the approval condition. Government Code § 66499.20.3 is clear that a county may only "***authorize*** the merger of contiguous parcels under common ownership." (Emphasis added.) The Planning Commission's approval of the merger is its "authorization." The County Ordinance is also clear that common ownership is required at the time of the Planning Commission's approval, not afterwards. County Ordinance 90808.00 states that the "Merger can only be ***considered*** where: A. All the lots or parcels are contiguous." (Emphasis added.) County Ordinance 90808.03, states that the Planning Director (here the Planning Commission) "shall conduct a public hearing and ***approve or deny*** the lot merger based on consistency with…all the lots or parcels or contiguous." (Emphasis added.)

c. The lots to be merged are not contiguous because Leimgruber Road bisects the proposed Lot Merger. The Lot Merger would violate Government Code § 66499.20.3 that states a county may only "authorize the merger of ***contiguous*** parcels" and County Ordinance 90808.00 states that the "Merger can only be considered where: A. All the lots or parcels are ***contiguous***." (Emphasis added.)

d. County Ordinance 90808.00 prohibits the consideration of a merger where the parcels are separated or affected by a road. County Ordinance 90808.03, states that the Planning Director (here the Planning Commission) "shall conduct a public hearing and ***approve or deny*** the lot merger based on consistency with…The lots or parcels are ***not separated or affected by any*** easement, right-of-way, ***road***." (Emphasis added.)

e. State law prohibits the filing of a map with the County that does not have written consent of all parties that have any record title interest. (Gov. Code, § 66430.) Only the Board of Supervisors can provide written consent and that would be by vacating the road. The vacation of a road is a discretionary action wherein the Board of Supervisors must hear evidence and make legal findings. The applicant cannot promise the Board of Supervisors will exercise its discretion in any particular way; neither could the Planning Commission.

f. County Ordinance 90808.08 does not state as claimed by the applicant that conditions can be imposed to circumvent the above requirements. Further, this Ordinance section cannot be used to circumvent any of State requirements because the State Subdivision Map Act prohibits local ordinances that are not consistent with State law or conflict with the provisions of the Subdivision Map Act. (Gov. Code, §§ 66421, 66498.6 [local agencies do not have the option to disregard any state or federal laws, regulations, or policies.)

g. In order to avoid the legal requirement that a rezoning must be approved before the Lot Merger, the applicant inaccurately represented to the Planning Commission and public at the hearing that the merged parcels would retain their original zoning. This assertion contradicted the resolution the Planning Commission was being asked to adopt which states:

> "In accordance with the provisions established in Chapter 1 of Division 5, Section 90501.01 (Single Base Zoning Area) of the Imperial County Land Use Ordinance, each lot or parcel of land within the unincorporated areas of Imperial County must be classified under a single base zoning designation. Upon approval of Lot Merger #00191, the predominant zoning designation of the project area, M-1-U (Light Industrial, Urban Overlay), will apply to the entire merged parcel."

h. The merged parcels cannot retain their original zoning. County Ordinance 90501.01 requires that every parcel shall only be classified in only one base zone. The applicant's interpretation of County Ordinance 90501.01 is wrong – the exception to single zoning is limited to parcels greater than 40 acres that are zoned A-2/A-3 Traffic Corridor. Allowing every parcel over 40 acres to have multiple zones would essentially nullify the prohibition.

i. The Lot Merger does not conform to the County Zoning Ordinance. The proposed subdivision must be consistent with applicable zoning ordinances. (*van't Rood v. County of Santa Clara* (2003) 113 Cal.App.4th 549, 564.) To avoid this requirement, the applicant and County are propagating a fiction that the Lot Merger is not an approval of the Data Center. The Lot Merger would not be requested if it were not for the Data Center; it is one step in the process toward the approval and construction of the Data Center. The Data Center is not a single use, but composed of numerous uses which are not automatically permitted by County Ordinances. The applicant does not disagree with the City's assessment that the A-2 zoning does not permit a data center. As to permitted land uses, the applicant fails to mention that a battery energy storage system ("BESS"), electrical power generation plant, transmission interconnection, substation, and data center yard components of the Data Center require a conditional use permit ("CUP") in the M-1 zone. A BESS, electrical power generation plant, transmission interconnection, and substation require a CUP in M-2. The Planning Commission cannot assume that the CUPs will be granted in the future.

j. In response to the City's demonstration that the Lot Merger is not consistent with the General Plan, the applicant made up supporting law. There is no such statute that states a planning department's determination that a use is permitted under zoning constitutes a per se finding of General Plan consistency. The applicant does not cite to any legal authority because it does not exist.

k. The applicant misstated the ALUCP. The ALUCP does not state, as the applicant alleges, that the requirement for a consistency review occurs when a building permit is applied for. The ALUCP states: "All projects shall be referred to the Commission at the earliest reasonable point in time so that the Commission's review can be duly considered by the local jurisdiction prior to formalizing its action." As the Lot Merger is a critical component of the Data Center (because without it the Data Center could not be constructed) the Commission should review the Data Center for consistency before the Lot Merger is considered.

l. The applicant is claiming a different CEQA exemption than the County for the Lot Merger. The County alleges the Lot Merger is exempt under Class 5, minor alteration of land (staff report, p. 4). The applicant is claiming the lot merger is exempt as a ministerial approval. A lot merger is a discretionary approval, not ministerial.

The City reserves the right to submit additional evidence and legal argument to support its contentions that the lot merger as proposed is illegal.

5. The City is requesting that the Board of Supervisors deny the Lot Merger.

Thank you for your attention to this matter.

Sincerely,

Alene Taber

cc: Dennis Morita, City Manager (dmorita@imperial.ca.gov)
Katherine Turner, Esq., City Attorney (kturner@cityofimperial.org)
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Attachment