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

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| IMPERIAL VALLEY COMPUTER MANUFACTURING, LLC a California limited liability company;<br><br>Petitioner,<br>vs.<br><br>COUNTY OF IMPERIAL, a general law county, and IMPERIAL COUNTY BOARD OF SUPERVISORS,<br><br>Respondents, | Case No: ECU004800<br><br>Judge: Honorable Jeffrey B. Jones<br><br>**SUPPLEMENTAL BRIEF IN SUPPORT OF PEREMPTORY WRIT OF MANDATE; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT**<br>(Code Civ. Proc. §§ 1060, 1085) |

**SUPPLEMENTAL BRIEF IN SUPPORT OF PEREMPTORY WRIT OF MANDATE**

The Extension Moratorium inherits the substantive defects of the initial moratorium and adds the § 65858(d) report defect.

Government Code § 65858(c) provides that the legislative body "shall not adopt or extend" any interim ordinance without the required findings; because the June 16, 2026 Moratorium is invalid ab initio, there was no valid interim ordinance in existence to extend on July 14, 2026, and the extension of a nullity is itself a nullity.

Gov. Code § 65858(d) requires that the Board issue a written report describing "the measures taken to alleviate the condition which led to the adoption of the ordinance" ten days prior to the expiration of the interim ordinance or any extension. The report is the statutory vehicle by which the legislative body accounts publicly for the measures taken to alleviate the claimed emergency.

The report operates in tandem with subdivision (c), which forbids the legislative body to "adopt or extend" an interim ordinance without findings of a current and immediate threat: whether the claimed condition persists despite the measures taken - the question the report exists to answer - is the predicate for any lawful extension. Where the legislative body elects to act on an extension, the structure and purpose of the statute require that the report precede the extension hearing; a report issued only after the ordinance has been prolonged is an empty recital about a decision already made.

Nothing in the ordinance is styled a § 65858(d) statutory report issued by "the legislative body." The extension was adopted without the mandatory statutory predicate, and no such report exists anywhere in the County's publicly available legislative materials.

No report preceded the July 14, 2026 extension, none exists today, and in all events the total absence of any report is an admission by omission: there were no "measures taken to alleviate the condition" because there was never a condition to alleviate.

The County's two Moratoriums rest on the claim that "applications pending for Data Center Facilities" are sufficient for a finding that there is a "current and immediate threat." But the County does not mention Petitioner's Project, its 191-foot setback, its 20-foot acoustic berm, its 1,000-foot equipment buffer, or the year of cooperative processing that preceded the moratorium. Findings adopted to prolong a moratorium aimed at a specific project that they never discuss are not legislative findings of a threat.

Case law has already rejected moratoriums whose sole finding is that applications are pending. *Building Industry Legal Defense Foundation v. Superior Court* (1999) 72 Cal.App.4th 1410, 1418-1419 explains this best; "Although the Legislature could have tied adoption of an interim ordinance to the submission or processing of a development application, it chose to set the bar higher, restricting its application to situations where an approval of an entitlement of use was imminent."

*California Charter Schools Assn. v. City of Huntington Park* (2019) 35 Cal.App.5th 362, 371, similarly stated succinctly that "processing a filed application as in *Building Industry* does not pose a current and immediate threat to the public health, safety, or

welfare because no rights will vest imminently." The parallel is exact: the ordinance invalidated in *Huntington Park* was a 45-day urgency ordinance later extended an additional ten months and fifteen days, the same 45-day-plus-extension sequence the County has followed here.

In *216 Sutter Bay Associates v. County of Sutter* (1997) 58 Cal.App.4th 860, 869, cited by the County for support, the development agreements were one day from vesting and the moratorium "acts to prevent the vesting of the development agreements in light of the pending referendum."

Imperial County avoids any facts regarding Petitioner's data center application which has been pending for over a year. The County does not make a finding that Petitioner's data center has submitted for building permits, that any such permit is pending, or that approval is imminent. Petitioner included the transcript of the April 7, 2026, lot merger public hearing where the Board's dialogue with its Planning Director confirmed that approval is very far from imminent. The fact that the two Moratoriums are silent on what facts make the data center approval imminent is a fatal defect, and simply hiding from bad facts does not support findings of an emergency. The absence of any imminent approval defeats the County's urgency findings; it does not diminish Respondents' present duty to process Petitioner's deemed-complete applications, nor the harm that accrues each day that processing remains suspended. Both Government Code § 25123(d) and § 65858 condition urgency legislation on a declaration of the facts constituting the urgency. See Gov. Code § 25123(d) (urgency ordinance "shall contain a declaration of the facts constituting the urgency.") Imperial County's two Moratoriums contain no declaration of facts constituting an urgency, only recitals of pending applications and awareness of concerns.

Imperial County's failure to identify any imminent approval is fatal. A project the County processed cooperatively for a year, with no indication of when approval would occur, is not a project whose approval is imminent. *Huntington Park*, 35 Cal.App.5th at p. 370 (desire to study does not constitute a current and immediate threat).

The Extension Moratorium's own findings confirm the defect. Finding 10 recites that permits "would be issued administratively and without review by the Board of Supervisors." Administrative issuance of a by-right permit is not a harm; it is how every by-right use in California is approved, and it describes the County's zoning code operating exactly as written.

Finding 11 is circular on its face: it declares the threat exists "[b]ecause Data Center Facilities . . . are permitted by-right, the County currently has limited ability to review" them. The County's own lawful zoning is the declared emergency. And Finding 11's recital that inconsistent development is "otherwise imminent" is a bare conclusion contradicted by the County's own April 7, 2026 record, where the Planning Director confirmed that no permits had been authorized and that water and electrical hookups must precede any occupancy. Under *Huntington Park*, the Court independently tests whether the recited facts - not the recited conclusions - constitute an urgency.

Finding 12 repeats the contradiction that invalidates the original Moratorium. Immediately after Finding 10 declares a "current and immediate threat," Finding 12 recharacterizes the same harms as "potential harms . . . should Data Center Facilities be permitted or constructed." A potential harm is the opposite of a current and immediate one. The County had thirty days and this lawsuit to cure that defect, and re-adopted it.

It is also noted that the only "threat" identified by the County is that the data center might be inconsistent with regulations the County has not yet adopted. Regulatory inconsistency with contemplated future rules is not itself a harm, it is the definition of every by-right use during any study period. Findings are reviewed deferentially, but conclusory recitals unsupported by evidence are not findings supporting an emergency moratorium.

Beyond these conclusory recitals, the only evidentiary support the Extension Moratorium recites is awareness "of concerns regarding adverse effects of Data Center Facilities, including the proximity of such uses to residential neighborhoods." The adverse effects are not identified, but purportedly the County is aware of adverse effects. But concerns of adverse effects are not evidence of a threat to public health. The only purported concern is the proximity to residences and that concern fails to disclose the 225 other uses, many of which are far more impactful at zero setback.

Section IV of the Extension Moratorium also makes the *Building Industry* violation explicit. It provides that no permit or entitlement shall be issued until the moratorium, including any extension, has expired, and that no permit will be issued "if it is inconsistent with any County laws, ordinances, General Plan, or regulations that are amended or adopted by reason of the review that occurs during the moratorium." That is the precise displacement of deemed-complete applications that *Building Industry* forbids, and it contradicts the concession of the County's outside counsel on the public record that "[o]nce a permit application has been deemed complete by an agency, the applicable ordinances cannot subsequently be changed for that project." (Verified Petition ¶ 90.)

Section IV's recital that applications "may be accepted and processed" during the moratorium does not cure the violation: processing that can never ripen into action for the life of the moratorium and every extension of it is the constructive denial of a completed application, not the processing of one. What Building Industry forbids in form, Section IV accomplishes in substance.

The Extension Moratorium's duration refutes its premise. The advisory committee the County created is to present its recommendations to the Board by October 1, 2026, yet the Extension Moratorium freezes data centers through June 15, 2027 - more than eight months after the committee's report is due. An "emergency" freeze that outlasts its own study by eight months is not an interim measure tailored to a current and immediate threat; it is a prohibition.

The Extension Moratorium identifies no new study and no measure taken to alleviate the claimed condition. Its findings still do not mention Petitioner's Project, its 191-foot setback, its 20-foot berm, its 1,000-foot equipment buffer, or the year of cooperative processing that preceded the moratorium. Findings that never discuss that project are not legislative findings of a threat. Whether recited facts may be held to constitute an urgency is a legal question the Court reviews independently, and the recitation of statutory words, without supporting facts, cannot supply the current and immediate threat the statute requires.

Respectfully submitted,

LAW OFFICES OF SEBASTIAN RUCCI, P.C.

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Attorneys for Petitioner

ATTORNEY'S CERTIFICATE OF SERVICE BY E-MAIL

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

I CERTIFY THAT on July 15, 2026, the **SUPPLEMENTAL BRIEF IN SUPPORT OF PEREMPTORY WRIT OF MANDATE** was served electronically served on Nathan George at Ngeorge@rmmenvirolaw.com and Geoffrey Holbrook at geoffreypholbrook@co.imperial.ca.us by One Legal, through www.onelegal.com interface.

I FURTHER CERTIFY THAT on July 15, 2026, the **SUPPLEMENTAL BRIEF IN SUPPORT OF PEREMPTORY WRIT OF MANDATE** was served electronically served on Nathan George at Ngeorge@rmmenvirolaw.com and Geoffrey Holbrook at geoffreypholbrook@co.imperial.ca.us from my law office Sebastian@Rucci.Law.

The transmission was complete without error and I did not receive an electronic notification to the contrary.

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