

**STATE OF NEW MEXICO
COUNTY OF DOÑA ANA
THIRD JUDICIAL DISTRICT COURT**

FILED
3rd JUDICIAL DISTRICT COURT
Dona Ana County
10/28/2025 3:46 PM
BERNICE A. RAMOS
CLERK OF THE COURT
Leticia Padilla

NO: D-307-CV-2025-02766

**EMPOWERMENT CONGRESS OF
DOÑA ANA COUNTY,
JOSÉ SALDAÑA JR., and
VIVIAN FULLER**

Duffin, Rebecca C.

Petitioners/Plaintiffs,

v.

THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF DOÑA ANA

Respondent/Defendant.

**PETITIONERS'/PLAINTIFFS'
EMERGENCY APPLICATION FOR TEMPORARY RESTRAINING ORDER AND
OPPOSED MOTION FOR PRELIMINARY INJUNCTION**

Empowerment Congress of Doña Ana County; José Saldaña Jr., resident of Sunland Park; and Vivian Fuller, resident of Santa Teresa (hereinafter, "Petitioners/Plaintiffs"), by and through undersigned counsel, hereby respectfully submit to this Court an Emergency Application for Temporary Restraining Order and Motion for Preliminary Injunction, restraining the Doña Ana County Board of Commissioners (hereinafter, "Respondent/Defendant") from implementing and enforcing Ordinance No. 367-2025 ("IRB Ordinance"), Ordinance No. 368-2025 ("LEDA Ordinance 1"), and Ordinance No. 369-2025 ("LEDA Ordinance 2"), (collectively, "Ordinances"), and restraining Respondent/Defendant from releasing any funds pursuant to the LEDA Ordinances and Act and any bonds pursuant to the IRB Ordinance and Act, while pending review by this Court (*See Petitioners/Plaintiffs' Petition and Complaint, Exhibit 1, Exhibit 2, and Exhibit 3, filed October 17, 2025*). Pursuant to Rule 1-066(B)(2) NMRA, Counsel for Respondent/Defendant was provided notice, via email, on October 27, 2025, of

Petitioners/Plaintiffs’ intent to file this Application. Additionally, on October 20, 2025, Counsel during the administrative proceedings for Respondent/Defendant was provided notice of Petitioners/Plaintiffs’ Petition and Complaint and Motion to Stay in this matter, which contains similar arguments and remedies as discussed and requested in this Application and Motion. Counsel for Respondent/Defendant oppose this motion. In support of this Application and Motion, Petitioners/Plaintiffs state:

Petitioners/Plaintiffs seek a Temporary Restraining Order (hereinafter, “TRO”) and Preliminary Injunction preventing Respondent/Defendant from enforcing and implementing the Ordinances, and preventing Respondent/Defendant from releasing any funds pursuant to LEDA Ordinances 1 and 2 and from issuing any bonds pursuant to the IRB Ordinance. The Ordinances were premised on an incomplete application and allow the use of a significant amount of public funds and resources for “Project Jupiter” – a proposed development in Santa Teresa, New Mexico, that will comprise of, upon information and belief,¹ at least four data centers, micro-grid facilities, natural gas power plants, a battery storage center and a desalination plant – in the absence of adequate and necessary consideration of the proposed project’s adverse impacts to the

¹ Petitioners note that, to date, it remains unclear what facilities are included within Project Jupiter because the project applicants continue to issue conflicting and unclear statements on what facilities and power sources the proposed development will include. For example, Project Jupiter applicants at one point stated it would rely upon nuclear small modular reactors to power its microgrid, but now say it will rely upon natural gas power plants. Similarly, Project Jupiter applicants have issued conflicting materials and statements that the proposed development would include a desalination plant, but would also not include a desalination plant. *See* BorderPlex Digital Assets, LLC, Presentation to the New Mexico Legislative Finance Committee (August 19, 2025) [Accessible here: <https://www.nmlegis.gov/handouts/ALFC%20081925%20Item%204%20BorderPlex%20Digital%20Assets%20Presentation.pdf>]; *see* Project applicants’ Project Jupiter website [Accessible here: <https://projectjupitertogether.com/>]; *see* Memorandum of Understanding between BorderPlex Digital Assets, LLC, and New Mexico Governor Michelle Lujan-Grisham (February 2025) [Accessible here: <https://edd.newmexico.gov/wp-content/uploads/2025/02/BorderPlex-Memorandum-of-Understanding-final.pdf>]; *see also* Exhibits 1 and 2 for Project Jupiter’s project description (*filed October 17, 2025*).

public health, safety, welfare, economic vitality, and quality of life. The Ordinances ultimately allow a proposed development to move forward that stands to significantly impact Plaintiffs' public water supply and availability of water; substantially and adversely impact Plaintiffs' air quality and health; likely increase dust and sandstorms due to the inappropriate and excessive development for the Project and the particular characteristics of the area's geology; and significantly increase the traffic, noise, and light pollution surrounding Plaintiffs' residences, overall detrimentally impacting Plaintiffs' quality of life.

STATEMENT OF FACTS

A. September 19 Hearing

1. Petitioners/Plaintiffs participated in Respondent/Defendant's September 19 public hearing, where Respondent/Defendant adopted Ordinance No. 367-2025, to issue Industrial Revenue Bonds ("IRBs"), and Ordinance No. 368-2025, to issue Local Economic Development Act ("LEDA") funding.
2. On August 15, 2025, unnamed companies ("Entity A," "Entity B," and "Entity C" in the IRB Application) submitted an IRB Application to Doña Ana County, titled "Project Jupiter Industrial Revenue Bond Application" (hereinafter, "Application") (*See Petitioners/Plaintiffs' Petition and Complaint, Exhibit 5, filed October 17, 2025*). The unnamed companies did not submit a separate application requesting LEDA funding.
3. On August 26, 2025, at a regular Board meeting, the Board voted 4-1 to hold a public hearing on September 19, 2025, to consider the adoption of the IRB Ordinance and LEDA Ordinance 1, based on the single IRB Application.
4. On September 3, 2025, the County posted in the Las Cruces Sun News public notice of the Board's intent to consider the IRB Ordinance and LEDA Ordinance 1.

5. On September 8, 2025, Petitioners/Plaintiffs submitted a formal written comment to the Board regarding the incompleteness of the Application, alleging the Application lacked the information and supporting materials necessary for the County to make a fully informed decision on whether the issuance of the IRBs and LEDA funding is within the public's interest and would not result in an unauthorized use of public funds and resources, as required by the Doña Ana County Code and state law.

6. On September 19, 2025, the Board held a public hearing within a regular meeting to consider the adoption of the two Ordinances.

7. At the September 19 Board public hearing, Board Commissioner and Vice Chair Susana Chaparro revealed to the public and on the record that the Application the Commission was to consider contained hundreds of pages of information, that several pages of the Application were missing or blank, and the Board had just received these hundreds of pages to review only days before the September 19 Board public hearing and vote.

8. On September 19, 2025, the Board voted 4-1 to adopt the IRB Ordinance, and voted 4-1 to adopt the LEDA Ordinance 1.

9. On September 22, 2025, the Doña Ana County Clerk recorded both Ordinances. Pursuant to Doña Ana County Code § 1-13.B, all enacted ordinances shall become effective 30 days from the date of recording by the County Clerk. Accordingly, the Ordinances become effective on October 22, 2025.

B. October 14 Hearing

10. Petitioners/Plaintiffs participated in Respondent/Defendant's October 14 public hearing, where Respondent/Defendant adopted Ordinance No. 369-2025 to issue LEDA funding for reduced permit fees.

11. On September 9, 2025, at a regular Board meeting, the Board voted 4-1 to hold a public hearing on October 14, 2025, to consider the adoption of Ordinance No. 369-2025 to issue LEDA funding for reduced permit fees for Project Jupiter.
12. On September 10, 2025, Petitioners submitted a New Mexico Inspection of Public Records Act Request, NMSA 1978 §§ 14-2-1 *et seq.*, for the October 14 LEDA Ordinance Application. The County responded with the same IRB Application submitted on August 15, 2025. (*See Petitioners/Plaintiffs' Petition and Complaint, Exhibit 5, filed October 17, 2025*).
13. On September 14, 2025, the County posted in the Las Cruces Sun News public notice of the Board's intent to consider LEDA Ordinance 2.
14. On October 14, 2025, the Board held a public hearing within a regular meeting to consider the adoption of LEDA Ordinance 2.
15. On October 14, 2025, the Board voted 4-1 to adopt LEDA Ordinance 2, approving economic assistance to the companies for a portion of the costs, in the form of a reduction of certain building permit fees, of the acquisition, construction, and improvement of a power generation, battery storage and microgrid facility, and four data center facilities to be located in Doña Ana County, New Mexico. Doña Ana County Ordinance No. 369-2025.
16. On October 15, 2025, the Doña Ana County Clerk recorded the Ordinance. Pursuant to Doña Ana County Code § 1-13.B, all enacted ordinances shall become effective 30 days from the date of recording by the County Clerk. Accordingly, Ordinance No. 369-2025 becomes effective on November 14, 2025.

ARGUMENT

Petitioners/Plaintiffs are entitled to a TRO because immediate and irreparable injury, loss and damage will result to Petitioners/Plaintiffs before Respondent/Defendant can be heard in

opposition. Rule 1-066(B)(1) NMRA. Petitioners/Plaintiffs meet all four requirements for a TRO, as well as a preliminary injunction, as demonstrated below.

I. Petitioners/Plaintiffs will suffer irreparable injury unless the TRO is granted.

17. Petitioners/Plaintiffs have a significant interest in their local governing body following its own rules, as well as state law. *See Concerned Residents for Neighborhood Inc. v.*

Shollenbarger, 1991-NMCA-105, ¶ 17, 113 N.M. 667, 831 P.2d 603 ("...a petition for writ of certiorari acts as a check on the propriety of the division's actions with respect to license transfers"); *see also High Ridge Hinkle Joint Venture v. City of Albuquerque*, 1994-NMCA-139, ¶ 31, 119 N.M. 29, 888 P.2d 475.

18. The New Mexico Industrial Revenue Bond Act, the New Mexico Local Economic Development Act, and the Doña Ana County Code requires Respondent/Defendant to make a fully informed decision within the public's interest, in a manner that prevents the abuse and waste of public funds and resources. Doña Ana County Code § 56-8.A; NMSA 1978 § 5-10-2, § 4-59-3.

19. The New Mexico County Industrial Revenue Bond Act, NMSA 1978 §§ 4-59-1 *et seq.*, authorizes counties to "issue revenue bonds for the purpose of defraying the cost of acquiring, by construction and purchase or either, any project and to secure the payment of such bonds ..." NMSA 1978 § 4-59-4(C).

20. Doña Ana County Code § 56-8.A further mandates that the County can issue IRBs "only after the County has been fully informed concerning the applicant and its current status and future plans," necessitating that "the protection of the County's interests requires thorough investigation of any request for industrial revenue bonds."

21. The Application the Board received before adopting the Ordinances was for the issuance of IRBs only.
22. The Application is incomplete; missing pages and information; lacking any evaluation of the proposed project's impacts on water quantity, water quality, soil quality, vegetation, any threatened or endangered species, risk of pollutants and contaminants, anticipated emissions, distances to schools and other youth facilities, likely effects on adjacent property values, and any other adverse impacts reasonably anticipated and associated with the proposed project; and failing to provide any written and demonstrated commitment to the community.
23. Thus, the Board could not have properly considered whether Project Jupiter will be a significant threat to the public health, safety, and welfare, and the Board cannot engage in a meaningful cost-benefit analysis of the project, in violation of the New Mexico Industrial Revenue Bond Act and the Doña Ana County Code. *See* NMSA 1978 § 4-59-3, Doña Ana County Code § 56-8.A
24. Moreover, the New Mexico Local Economic Development Act (hereinafter, "Act"), NMSA 1978 §§ 5-10-1, *et seq.*, only permits "qualifying entities" to apply for and receive LEDA grants. NMSA 1978 § 5-10-3(L).
25. The Act requires the County's evaluation of an application for LEDA funding be based on "the provisions of the economic development plan, the financial and management stability of the qualifying entity, the demonstrated commitment of the qualifying entity to the community, a cost-benefit analysis of the project and any other information the local or regional government believes is necessary for a full review of the economic development project application." NMSA 1978 § 5-10-9(B).

26. Doña Ana County Code § 166-4 further requires an applicant's proposal for LEDA funding to "describe the proposed project, including the names and addresses of persons with an interest in the project, the number and types of jobs to be created, wages and benefits associated with the jobs to be created, the type and amount of assistance sought from the County, and all other information requested by the County."
27. The Application the Board received was for IRB funding, not LEDA funding.
28. The Application the Board received lacked the necessary information for the Board's consideration: missing pages and information, while also failing to show that "Project Jupiter" is a qualifying entity under the Act.
29. Thus, the Board improperly and arbitrarily considered an incomplete application for LEDA funding from a non-qualified entity, and the Board could not have reasonably made a fully-informed decision on whether to adopt the Ordinances.
30. The Ordinances, when enforced, allow a proposed project development to move forward despite significant impacts to Petitioners/Plaintiffs' public water supply and availability of water; substantial and adverse impacts to Petitioners/Plaintiffs' air quality and health; likely increased dust and sandstorms due to the inappropriate and excessive development for the Project and the particular characteristics of the area's geology; significantly increased traffic, noise, and light pollution surrounding Petitioners/Plaintiffs' residences; and likely result in a decline of Petitioners/Plaintiffs' adjacent property values, overall detrimentally impacting Petitioners/Plaintiffs' quality of life and causing Petitioners/Plaintiffs to experience immediate and irreparable harm, loss, and damage. *See Affidavit of Empowerment Congress of Doña Ana County; Affidavit of José Saldaña Jr. and Affidavit of Vivian Fuller (Attached to Expedited Motion for Stay, filed October 21, 2025).*

31. Construction of Project Jupiter is proposed to take at least two years and upon information and belief, has already begun in preparation for the Ordinances going into effect, two of which became effective on October 22, 2025, and the third becoming effective on November 14, 2025. *See* Julian Resendiz, *Signs Point to Start of Construction at \$165 Billion Project Jupiter AI Data Center*, KRQE (Oct. 17, 2025), <https://www.krqe.com/news/new-mexico/signs-point-to-start-of-construction-at-165-billion-project-jupiter-ai-data-center/?nxsparam=6>; *see* photos of Project Jupiter site, taken October 27, 2025 (*attached hereto as Attachment I*).

32. Following the completion of construction, the proposed development's facilities will operate 24 hours a day, 7 days a week, 365 days a year. Once in operation, the proposed development will draw significant amounts of water from the public water supply, as well as emit extreme levels of several air pollutants and toxins, jeopardizing the public health. Based on the recent public notice for two air quality permit applications for the construction of Project Jupiter's microgrid facilities, published in the Las Cruces Sun News on October 10, 2025, *see Petitioners/Plaintiffs' Petition and Complaint, Exhibit 4 (filed October 17, 2025)*, the proposed development stands to emit at least 436.87 tons of Particulate Matter ("PM")¹⁰; 436.87 tons of PM 2.5; 64.74 tons of Sulfur Dioxide ("SO₂"); 498.77 tons of Nitrogen Oxides ("NO_x"); 494.26 tons of Carbon Monoxide ("CO"); 195.76 tons of Volatile Organic Compounds ("VOC"); 43.81 tons of Hazardous Air Pollutants ("HAPs"); 273.07 tons of Ammonia ("NH₃"); and 46,560,414 tons of Greenhouse Gas Emissions – per year.

33. Petitioners/Plaintiffs note that these are proposed emissions for only the microgrid facilities for Project Jupiter, and do not include the proposed emissions for the four data centers, battery storage center, desalination plant, or other facilities anticipated to be included in the

proposed development – meaning the total emissions, and associated adverse health impacts, are most likely to be significantly higher than just the emissions listed above.

34. Adverse health impacts from PM 2.5 and PM 10 exposure can include: heart disease; lung cancer; chronic obstructive pulmonary disease (“COPD”); lower-respiratory infections like pneumonia; strokes; type 2 diabetes; other respiratory diseases and illnesses; adverse birth outcomes, such as premature birth, low birth weight, infant and fetal mortality; and overall lower life expectancies in affected populations.² Adverse health impacts from SO₂ exposure can include: wheezing; shortness of breath and chest tightness; asthma; respiratory illnesses and diseases; and lung cancer.³ Adverse health impacts from NO_x exposure can include: increased inflammation of the airways; worsened cough and wheezing; reduced lung function; increased asthma attacks; increased asthma in children; cardiovascular disease; kidney harm; neurological harm; affected pregnancy and adverse birth outcomes; autoimmune disorders, and cancer.⁴ Adverse health impacts from CO exposure can include: neurological harm; cardiovascular harm and disease; exacerbation of pre-existing heart and lung disease; miscarriages and developmental delays in children.⁵ Adverse health impacts from VOC exposure can include: dizziness; fatigue; visual disorders; memory impairment; loss of coordination; skin and eye irritation; lung and breathing problems; headaches; damage to the liver, kidneys and central nervous system; and

² See *PM 2.5*, State of Global Air, <https://www.stateofglobalair.org/pollution-sources/pm25> (last accessed October 16, 2025); see *Particle Pollution*, American Lung Association, <https://www.lung.org/clean-air/outdoors/what-makes-air-unhealthy/particle-pollution> (last updated May 27, 2025).

³ See *Sulfur Dioxide*, American Lung Association, <https://www.lung.org/clean-air/outdoors/what-makes-air-unhealthy/sulfur-dioxide> (last updated October 26, 2023).

⁴ See *Nitrogen Dioxide*, American Lung Association, <https://www.lung.org/clean-air/outdoors/what-makes-air-unhealthy/nitrogen-dioxide> (last updated October 26, 2023).

⁵ See *Public Health Statement for Carbon Monoxide*, Agency for Toxic Substances and Disease Registry, <https://wwwn.cdc.gov/TSP/PHS/PHS.aspx?phsid=1146&toxid=253> (last updated Dec. 13, 2012).

cancer.⁶ Adverse health impacts from HAPs exposure can include: damage to the immune system; harm to neurological, reproductive, developmental, respiratory systems; and cancer.⁷ Adverse health impacts from NH₃ exposure can include: respiratory irritation; eye, nose, and throat irritation; lung damage; and other respiratory complications.⁸

35. Petitioners/Plaintiffs are residents of Doña Ana County. One residence of which is located, upon information and belief, approximately 2 miles from the proposed “Project Jupiter” development described in the Application. One residence of which is located, upon information and belief, approximately 3 miles from the proposed “Project Jupiter” development described in the Application.

36. The incomplete Application, which the Board relied upon for its decision to adopt all three Ordinances, explicitly states, “[t]he location decision for Project Jupiter remains competitive and is contingent on securing the necessary IRB package proposed in this application,” meaning the proposed Project intended to rapidly move forward upon the Ordinances becoming effective, and with the IRB Ordinance and LEDA Ordinance 1 already in effect, significant construction has begun (*See Petitioners/Plaintiffs’ Petition and Complaint, Exhibit 5, filed October 17, 2025*); *see* Attachment 1.

37. If this Court does not grant a TRO, the proposed project will continue to move forward, relying on public funds and resources due to a local governing body’s unlawful exercise of authority, as Respondent/Defendant failed to follow the mandated considerations and evaluations

⁶ See Ketura Persellin, *What Are VOCs?*, Environmental Working Group (Sept. 11, 2023), <https://www.ewg.org/news-insights/news/2023/09/what-are-vocs>.

⁷ See *Health Effects Notebook for Hazardous Air Pollutants*, U.S. Environmental Protection Agency, <https://www.epa.gov/haps/health-effects-notebook-hazardous-air-pollutants> (last updated December 5, 2024).

⁸ See *Public Health Statement for Ammonia*, Agency for Toxic Substances and Disease Registry, <https://wwwn.cdc.gov/TSP/PHS/PHS.aspx?phsid=9&toxid=2> (last updated October 26, 2011).

designed to protect the public health, safety, welfare, and economic vitality of the community. Petitioners/Plaintiffs will suffer irreparable injury to their interest in their local governing body abiding by all laws, codes, and regulations, as well as suffer irreparable injury to their health, wellbeing, residences, communities, and overall quality of life if the Project is allowed to move forward. Moreover, Petitioners/Plaintiffs own property and live adjacent to the proposed development, which once in operation, will likely cause Petitioners/Plaintiffs' property value to decline substantially.

II. The threatened injury to the Petitioners/Plaintiffs outweighs any damage the TRO might cause the Respondent/Defendant, or any interested party.

38. The injury to Respondent/Defendant and other interested persons if the TRO is granted is minimal, if it exists at all. The TRO will simply restore the status quo and ensure the Board follows all legal processes and requirements in adopting ordinances and issuing public funds or releasing bonds to proposed projects in Doña Ana County.

39. Requiring Respondent/Defendant to follow all legal processes and requirements will not harm Respondent/Defendant because as a local governing body, Respondent/Defendant is required to follow all legal processes and requirements when it acts.

40. No person has a right to the issuance of industrial revenue bonds because the County's issuance of industrial revenue bonds is discretionary. *See* Doña Ana County Code § 56-8.E ("The Board of County Commissioners (hereinafter "the Board") reserves the right to deny any application for financing at any stage of the proceedings prior to the issuance of the bonds"). Thus, other interested persons who may benefit from the release of industrial revenue bonds will not suffer substantial harm if the Court requires the Board to follow all applicable laws and regulations in its consideration of the IRB Ordinance.

41. Likewise, no person has the right to receive LEDA funding because the County's issuance of LEDA funding is discretionary. *See* Doña Ana County Code § 166-4 ("The County may accept or reject applications in its sole discretion"). Thus, other interested persons who may gain from the issuance of LEDA funding will not suffer substantial harm if the Court requires the Board to follow all applicable laws and regulations in its consideration of the LEDA Ordinances.

42. Meanwhile, if the Court does not grant a TRO and permits a local governing body to exercise its authority unlawfully, without following the mandated considerations and evaluations designed to protect the public health, safety, welfare, and economic vitality of the community, Petitioners/Plaintiffs will suffer irreparable injury to their interest in their local governing body abiding by all laws, codes, and regulations, as well as to their health, wellbeing, and quality of life, as discussed above.

43. The substantial harm Petitioners/Plaintiffs will experience, if this Court does not grant a TRO, significantly outweighs any harm, if it exists at all, that other interested persons may experience if this Court grants a TRO.

III. The issuance of the TRO will not be adverse to the public interest.

44. The assurance that governing bodies abide by all applicable laws, regulations, and codes in their public processes is always in the public interest, as it is a centerpiece of a democratic government operating in the public interest and with the public trust.

45. Requiring Respondent/Defendant to properly consider and evaluate a proposed project's potential adverse impacts on public health, safety, and welfare, and engage in a meaningful cost-benefit analysis, before Respondent/Defendant determines whether to adopt ordinances, is solely requiring Respondent/Defendant to abide by the laws and regulations designed to protect members of the public – which is well within the public interest.

46. This Court's grant of a TRO restraining Respondent/Defendant from implementing and enforcing Ordinance No. 367-2025, Ordinance No. 368-2025, and Ordinance No. 369-2025, as well as from releasing funds or bonds pursuant to the Ordinances, would serve the public interest.

IV. There is a substantial likelihood Petitioners/Plaintiffs will prevail on the merits.

47. Petitioners/Plaintiffs raise significant issues surrounding Respondent/Defendant's non-compliance with and violations of the Doña Ana County Code, the New Mexico Industrial Revenue Bonds Act, NMSA 1978 §§ 3-32-1, *et seq.*, and the New Mexico Local Economic Development Act, NMSA 1978 §§ 5-10-1, *et seq.*, demonstrating that Respondent/Defendant has arbitrarily considered an incomplete IRB application, yet adopted the IRB Ordinance and LEDA Ordinances 1 and 2 anyway, contrary to law.

48. The Doña Ana County Code requires Respondent/Defendant to consider and evaluate the following criteria when granting applications for IRBs: "(1) The extent to which the proposed project will create new or preserve existing employment opportunities within the community; (2) The extent to which the proposed project with industrial revenue bonds will increase the County's tax base compared to the extent to which the proposed project without industrial revenue bonds will increase the County's tax base; (3) The extent to which the proposed project will enhance and strengthen the County as a center of commerce, including, but not limited to, research, food processing, and manufacturing or distribution point location; and (4) The extent to which the proposed project will upgrade and improve structures, improve site accessibility and usefulness, and otherwise provide for the public health, safety and welfare." Doña Ana County Code § 56-8.D.

49. The Application that Respondent/Defendant considered, prior to the adoption of the IRB Ordinance, is incomplete and does not provide information, supporting materials, or evidence required for Respondent/Defendant to properly apply the four criteria and make a fully-informed decision, as required by the Doña Ana County Code. Doña Ana County Code § 56-8.A.

Respondent/Defendant's arbitrary adoption of the IRB Ordinance is contrary to law because based on the incomplete Application, Respondent/Defendant could not properly consider, evaluate, and apply the required criteria to make a "fully informed" decision as required by the Doña Ana County Code.

50. Moreover, Respondent/Defendant has adopted two LEDA Ordinances, issuing funds to a non-qualifying entity, in the absence of information and supporting materials necessary for the Board to make a fully informed decision on whether doing so serves the public's interest and would not result in an unauthorized use of public funds and resources, as required by law.

The New Mexico Local Economic Development Act mandates that only "qualifying" entities can apply for and receive LEDA funding. Qualifying entities under the Act are those that will manufacture, process, assemble, store, warehouse, distribute, or sell products; or are a tribal nation or pueblo; telecommunications sales enterprise; farmers' market; metropolitan redevelopment project; cultural facility; or retail business. Non-qualifying entities under the Act include businesses in which all or part of the activities involves the supplying of services to the general public or to governmental agencies or to a specific industry or customer, but not including businesses primarily engaged in the sale of goods or commodities at retail. NMSA 1978 § 5-10-3(L); *See* Local Economic Development Act (LEDA), New Mexico Economic Development Department, <https://edd.newmexico.gov/business-development/edd-programs-for-business/finance-development/leda/> (last accessed October 16, 2025).

51. The scope of the proposed project in the Application does not fall into any one of the nine qualifying categories under the Act, and the project will be primarily supplying its services to a specific industry and more broadly to the general public, establishing the project as a non-qualifying entity under the Act.

52. Respondent/Defendant's adoption of Ordinance No. 368-2025 and Ordinance No. 369-2025 to issue LEDA funding is contrary to law because the proposed project is not a qualifying entity under the Act.

53. Both the New Mexico Local Economic Development Act and the Doña Ana County Code further require an application for LEDA funding to include several details and materials, including "the financial and management stability of the qualifying entity, the demonstrated commitment of the qualifying entity to the community, a cost-benefit analysis of the project," and "the names and addresses of persons with an interest in the project, the number and types of jobs to be created, wages and benefits associated with the jobs to be created, the type and amount of assistance sought from the County." NMSA 1978 § 5-10-9(B); Doña Ana County Code § 166-4.

54. Respondent/Defendant considered an application for IRBs, but not LEDA funding, to inform its decision to adopt the LEDA Ordinances. The IRB Application that Respondent/Defendant evaluated was incomplete and lacked several of the materials required by law, including but not limited to, the financial and management stability of the project applicants, the demonstrated commitment to the community, a cost-benefit analysis of the project, the names and addresses of interested persons to the project, specific details on the number and types of jobs to be created, as well as wages and benefits associated with the

projected jobs, and the type and specific amount of assistance sought from the County. (*See Petitioners/Plaintiffs' Petition and Complaint, Exhibit 5, filed October 17, 2025*).

55. Even if Respondent/Defendant could consider the IRB Application from a non-qualifying entity for LEDA funding, Respondent/Defendant's arbitrary adoption of Ordinance No. 368-2025 and Ordinance No. 369-2025 is contrary to law because the Board could not properly consider and evaluate the requests for LEDA funding, as required by the Doña Ana County Code and the Act.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully request the following relief:

A. Issuance of a TRO enjoining Respondent/Defendant from implementing and enforcing Ordinance No. 367-2025, Ordinance No. 368-2025, and Ordinance No. 369-2025, pending the duration and outcome of this litigation;

B. Enjoin Respondent/Defendant from releasing any funds or bonds pursuant to the Ordinances, pending the duration and outcome of this litigation;

C. Grant a preliminary injunction enjoining Respondent/Defendant from implementing and enforcing Ordinance No. 367-2025, Ordinance No. 368-2025, and Ordinance No. 369-2025;

D. Grant a preliminary injunction enjoining Respondent/Defendant from releasing any funds or bonds pursuant to the Ordinances, pending the duration and outcome of this litigation; and

E. Such further relief as the Court deems just and proper.

RESPECTFULLY SUBMITTED on this 28th day of October, 2025, by:

NEW MEXICO ENVIRONMENTAL
LAW CENTER

/s/ Kacey J. Hovden
Kacey J. Hovden

State Bar ID: 161219
Maslyn K. Locke
State Bar ID: 151635
P.O. Box 12931
Albuquerque, NM 87195
Tel.: (505) 989-9022
Fax.: (505) 629-4769
khovden@nmelc.org
mlocke@nmelc.org
Attorneys for Petitioners/Plaintiffs

CERTIFICATE OF SERVICE

I certify that I caused a copy of this Application to be electronically served through the court's e-filing system on this 28th day of October, 2025, to the attorneys for Respondent/Defendant in the above-captioned matter:

David M. Wesner
dave@nmlgl.com
Randy M. Autio
randy@nmlgl.com
Kevin A. Morrow
kevin@nmlgl.com
NM LOCAL GOVERNMENT LAW, LLC
6121 Indian School Rd. NE, Suite 202
Albuquerque, NM 87110
(505) 889-0983
Attorneys for Respondent/Defendant

/s/ Kacey J. Hovden

The following photos were taken on Monday, October 27, 2025, in between approximately 8:20 A.M. and 8:25 A.M, at the Project Jupiter site located in Santa Teresa, New Mexico.





