

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

NO. D-307-CV-202502766

**EMPOWERMENT CONGRESS OF DOÑA ANA
COUNTY, JOSE SALDANA JR., AND VIVIAN
FULLER**

Petitioners/Plaintiffs,

v.

**THE BOARD OF COUNTY COMMISSIONERS
OF THE COUNTY OF DOÑA ANA**

Respondent/Defendant.

MOTION TO INTERVENE

Yucca Growth Infrastructure, LLC (“Yucca”), by and through undersigned counsel, and pursuant to binding precedent by the New Mexico Supreme Court and Rule 1-024 NMRA, moves to intervene in this action. Yucca further requests that the Court grant it the opportunity to respond to the pending Motion for Temporary Restraining Order. Attached to this Motion, as **Exhibit A**, is Yucca’s responsive pleading to the Petition for Writ of Certiorari or in the Alternative Complaint for Declaratory Judgement, which is a Motion to Dismiss filed pursuant to Rules 1-075(P), 1-019, and 1-012(B) NMRA.

Yucca has a direct and substantial legal interest in the validity and enforcement of the ordinances adopted by the Doña Ana County Board of County Commissioners (“BOCC”) authorizing the proposed development (“Project Jupiter”) in Santa Teresa, New Mexico. As a party in the in the Industrial Revenue Bond (“IRB”) and Local Economic Development Act (“LEDA”) county commission matters that resulted in the challenged ordinances, Yucca would be immediately and significantly affected by any order vacating, staying, or enjoining these

ordinances.¹ Lanham Napier, who presented and answered questions at the IRB and LEDA hearings on behalf of the IRB and LEDA applicants is on the leadership team for both Yucca and BorderPlex Digital Assets, LLC.

As a principal participant in the underlying proceedings and a named party in the challenged ordinances, Yucca has a right to intervene in this appeal. Under Rule 1-075(E) all parties to the administrative proceeding were entitled to service of the writ as matter of law. Yucca's interests are not adequately represented by the BOCC, whose governmental role does not encompass Yucca's specific business and operational concerns. Additionally, because this litigation directly impacts Yucca's rights and ability to proceed with Project Jupiter, intervention as of right under Rule 1-024(A)(2) NMRA is warranted. Alternatively, Yucca requests permissive intervention under Rule 1-024(B)(2) NMRA to protect its interests and participate fully in these proceedings.

BACKGROUND

The review and approval process for Project Jupiter's IRB Application and Local Economic Development Plan ("LEDA") ordinances was comprehensive and robust. The process included multiple BOCC hearings, five public outreach events, and the publication of extensive agenda packets and supporting documentation. As a culmination of this extensive process, the BOCC adopted three ordinances related to Project Jupiter: Ordinance No. 367-2025 (authorizing the issuance of industrial revenue bonds), Ordinance No. 368-2025 (approving LEDA funding),

¹ See Empowerment Congress's Writ, Exhibit 1, p.2 lines 4-7; Exhibit 2, p.1 lines 7-10; Exhibit 3, p.1 caption (naming Yucca). These exhibits each clearly name Yucca as a party-of-interest under each ordinance action.

and Ordinance No. 369-2025 (providing additional LEDA funding through reduced permit fees) (collectively, the “Ordinances”).

Yucca played a central and indispensable role throughout the Project Jupiter proceedings. As a signatory to the IRB Application² and a named party in the adopted Ordinances,³ Yucca’s involvement was foundational to Jupiter Project’s approval. Yucca was the applicant who answered Commission questions at the hearings, and also actively participated in the public process, including by making presentations at the BOCC’s public hearings on August 26, 2025, and September 19, 2025, and is specifically referenced in the text of the adopted Ordinances. Additionally, as the entity responsible for building, owning, and operating the microgrid system that will power the project, Yucca is indispensable to Project Jupiter’s future viability.

On October 17, 2025, Plaintiffs filed a Petition for Writ of Certiorari, or in the alternative, a Complaint for Declaratory Judgment, challenging the validity of the Ordinances. The Petition alleges that the Ordinances were adopted based on incomplete applications, insufficient environmental review, and procedural irregularities, and seeks to have the Ordinances vacated and their implementation enjoined. Shortly thereafter, on October 21, 2025, Plaintiffs filed an expedited Motion for Stay, requesting the Court to suspend enforcement of the Ordinances pending judicial review. One week later, on October 28, 2025, Plaintiffs filed their Motion for Temporary Restraining Order, asking the Court to enjoin the BOCC from implementing and enforcing the Ordinances or releasing any funds or bonds pursuant to the Ordinances.

ARGUMENT

Yucca has a right to intervene under controlling New Mexico Supreme Court precedent, which recognizes the right of parties who have participated in a legally significant manner in

² See Pet. Ex. 5 (IRB Application).

³ See Pet. Exs. 1–3 (the Ordinances).

administrative proceedings to intervene in subsequent appeals of agency decisions. In addition, Yucca is entitled to intervene as of right under Rule 1-024(A)(2) NMRA, and, alternatively, may be granted permissive intervention under Rule 1-024(B)(2) NMRA.

I. YUCCA IS ENTITLED TO INTERVENE IN THIS APPEAL AS A PARTY IN THE UNDERLYING PROCEEDINGS.

Yucca is entitled to intervene in this matter under controlling New Mexico Supreme Court precedent due to its substantial and direct participation in the underlying administrative proceedings.

Interested parties that participate in a “legally significant manner” in administrative rulemaking or quasi-judicial proceedings are entitled to participate in any subsequent appeal. *See New Energy Econ., Inc. v. Vanzi*, 2012-NMSC-005, 274 P.3d 53, 63–64. In *New Energy*, the New Mexico Supreme Court addressed a situation where appeals were filed challenging an agency’s rulemaking but excluded other interested parties who had actively participated in the underlying proceedings. *Id.* at 55–57. The Court held that interested parties who “contributed evidence that directly informed the inquiries made by [the agencies] in making their final decisions” and who “participated in the rule-making proceedings” were “parties” for purposes of appellate intervention, regardless of whether they were named in the original appeal. *Id.* at 62–64. The New Mexico Supreme Court stated that such parties “afford them a *right* to defend their positions as parties on appeal.” *Id.* at 62 (emphasis added).

Yucca demonstrated significant participation in the underlying proceedings that led to the adoption of the Ordinances. For example, Yucca was a signatory to the IRB Application,⁴ a process that required significant investment of legal, financial, and technical resources. After months of preparation, the application submitted to the BOCC included detailed project descriptions, capital

⁴ *See* Pet. Ex. 5 (IRB Application).

investment plans, and long-term infrastructure projections. Yucca stood at the forefront of pushing forward Project Jupiter including by presenting at two public hearings on August 25, 2025, and September 19, 2025.

Moreover, the Ordinances themselves specifically identify Yucca by name and directly link the approved IRB and LEDA funding to Yucca's proposed activities. Ordinance 367-2025 notes that Yucca "has proposed to the County that it will construct and operate the Series 2025A Project."⁵ And Ordinances 368-2025 and 369-2025 reference that the LEDA funding was approved *for Yucca*, among other parties, demonstrating that its participation was integral to BOCC's final decisions on the Ordinances.

Given Yucca's direct involvement as an applicant, public participant, and named beneficiary in the Ordinances, Yucca plainly qualifies as a "party" with the "right to defend their positions on appeal" under the standard articulated in *New Energy*. Accordingly, Yucca has a right to intervene in this appeal.

II. YUCCA HAS A RIGHT OF INTERVENTION UNDER RULE 1-024(A)(2).

Yucca is further entitled to intervene as of right under Rule 1-024(A)(2) NMRA because its interest in ensuring that the challenged Ordinances take effect is directly at stake in this litigation. Yucca's interests are also not adequately represented by the current parties, and its participation is necessary to ensure full protection of its rights and interests in the subject matter of this litigation.

Rule 1-024(A)(2) provides for intervention as of right "when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the

⁵ See Pet. Ex. 1 at 2 (Ordinance 367-2025).

applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.” Rule 1-024(A)(2) NMRA.

Here, Plaintiffs seek an order vacating the Ordinances. More immediately, Plaintiffs seek an order staying the BOCC’s decision and a temporary restraining order enjoining the BOCC from implementing or enforcing the Ordinances. If any of the above relief was granted, Yucca will have lost substantial business, financial, and operational interests associated with the approval of Project Jupiter by BOCC.

Moreover, Yucca interests cannot be adequately represented by the BOCC. Under Rule 1-024, where the interest the applicant seeks to protect is represented by a governmental entity, the applicant must show why the representation is inadequate. *See Chino Mines*, 114 N.M. at ¶ 11. However, federal courts interpreting Fed. R. Civ. P. 24 (the federal equivalent of Rule 1-024) have held that the “burden [of showing inadequacy] is the ‘minimal’ one of showing that representation ‘may’ be inadequate.” *Sanguine, Ltd. V. U.S. Dept. of Interior*, 836 F.2d 1416, 1419 (10th Cir. 1984) (quoting *Trbovich v. United Mine Workers*, 404 U.S. 528 538 n.10 (1972); *National Farm Lines v. ICC*, 564 F.2d 381, 383 (10th Cir. 177)); *see also Ortiz v. New Mexico*, 550 F.Supp.3d 1020, 1072 (D.N.M. 2021) (similar). Adequate representation requires that the interests must be “identical, rather than merely “harmonious.” *Kane County, Utah v. United States*, 94 F.4th 1017, 1033 (10th Cir. 2024). Even where the government and a private party seek the same relief, their interests may not be identical given that the government often has “extensive interests to balance,” including the interest of the public. *See id.* (citing *Brumfield v. Dodd*, 749 F.3d 339, 346 (5th Cir. 2014).

Yucca has expended significant resources in pursuit of the approval of Project Jupiter including but not limited to planning, permitting, and contractual commitments with third parties. Because the BOCC, as a governmental body, represents only one particular portion of the spectrum of interests at stake with the Ordinances, it does not fully represent the specific business, financial, and operational interests of Yucca in the continued approval and implementation of Project Jupiter. *See, e.g., WildEarth Guardians v. U.S. Forest Service*, 573 F.3d 992, 997 (10th Cir. 2009) (noting that the government’s “public mission and necessary public neutrality inherently conflict with the interests of intervening private parties”).

As in *New Energy*, the Petitioners here brought their petition for writ of certiorari against the BOCC but excluded the interested parties in the underlying proceeding. Just like the interested parties in *New Energy*, Yucca is not “content to sit on the sidelines.” *New Energy*, 2012-NMSC-005, 274 P.3d at 63.

III. ALTERNATIVELY, THE COURT SHOULD ALLOW YUCCA’S PERMISSIVE INTERVENTION.

In the alternative, the Court should grant Yucca permissive intervention under Rule 1-024(B) NMRA. Permissive intervention is appropriate “when an applicant’s claim or defense and the main action have a question of law or fact in common.” Rule 1-024(B)(2) NMRA. “In exercising its discretion . . . the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.” *Id.*

Here, Yucca’s interests in the enforcement of the Ordinances are directly implicated with the legal and factual issues at the core of this litigation. Yucca’s interests will be prejudiced if intervention is not permitted. Yucca risks substantial economic loss and disruption to its project if the Ordinances are struck down, and it possesses unique information and context that neither the County nor other parties can fully represent. This is precisely why Rule 1-075(E) contemplates

service on all the parties to the underlying administrative proceeding being challenged. Excluding Yucca from participation would deprive the Court of a complete and accurate view of the underlying hearing, and deny Yucca the opportunity to protect its significant investments and contractual interests.

Additionally, granting intervention will not unduly delay or prejudice the adjudication of the rights of the original parties in this matter because this case is in its earliest stages, with the Petition having been filed less than two weeks ago.

IV. TIMELINESS

Plaintiffs filed their Petition less than two weeks ago on October 17, 2025, their expedited Motion to Stay one week ago, on October 21, 2025, and their Motion for a Temporary Restraining Order yesterday, October 28, 2025. The time for defendant to answer has not expired, nor have any other significant proceedings taken place in this matter. The motion is therefore timely. *See, e.g., Thriftway Marketing Corp. v. State*, 111 N.M. 763, 810 P.2.d 349 (Ct. App. 1990) (a key consideration in determining timeliness is whether the effort to intervene occurred shortly after the would-be intervenor discovered such action was necessary to protect its interests).

V. CERTIFICATE OF CONFERENCE

Prior to filing this motion, Yucca conferred with all parties as to their opposition or non-opposition to the Motion. Plaintiffs' counsel indicated that they are opposed to the motion. Defendant BOCC's counsel indicated that Defendant BOCC is unopposed to the relief requested herein.

CONCLUSION

For all of the foregoing reasons, Yucca respectfully requests that the Court enter its order permitting them to intervene in this matter. Yucca further submits that it will comply with any

briefing deadlines imposed on Defendant BOCC, including any deadlines to respond to the Motion for Temporary Restraining Order.

Dated: October 30, 2025

Respectfully submitted,

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***Attorneys for Third-Party Intervenor Yucca Growth
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CERTIFICATE OF SERVICE

I hereby certify that a copy of this document was filed through the Court's electronic filing system this Thursday, October 30, 2025, and served on all parties of record.

/s/ James M. Feuille

James M. Feuille

Exhibit A

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

**EMPOWERMENT CONGRESS OF DOÑA ANA
COUNTY, JOSE SALDANA JR., AND VIVIAN
FULLER**

NO. D-307-CV-202502766

Petitioners/Plaintiffs,

v.

**THE BOARD OF COUNTY COMMISSIONERS
OF THE COUNTY OF DOÑA ANA**

Respondent/Defendant.

MOTION TO DISMISS PURSUANT TO RULE 1-075(P)(1), (4) AND RULE 1-012(B)(6)

Petitioners have filed an administrative appeal of three ordinances adopted by the Doña Ana County Board of County Commissioners (“BOCC”) under Rule 1-075 NMRA. In the alternative, Petitioners have asserted claims under the New Mexico Declaratory Judgment Act. Yucca Growth Infrastructure, LLC (“Yucca”), by and through undersigned counsel, and pursuant to Rules 1-075(P) NMRA and 1-012(B)(6), and without waiving any affirmative defenses, right to answer, or any relief to which Yucca may be entitled, files this Motion to Dismiss and would show the Court as follows:

INTRODUCTION

The ordinances at issue in this case identify Yucca as a named party in the adopted ordinances.¹ As such, Yucca is clearly a necessary party to this proceeding under Rules 1-075(E) and Rule 1-019, and Petitioners’ failure to join and serve Yucca constitutes a violation of due process warranting dismissal under Rule 1-075(P)(4).

Petitioners also attempt to invoke the New Mexico Declaratory Judgment Act as an alternative avenue for relief. However, as detailed below, New Mexico law does not permit the use of declaratory

judgment actions to circumvent the exclusive procedures and substantive limitations governing administrative appeals. As a result, Petitioners claims should be dismissed under Rule 1-012(B)(6) for failure to state a claim.

PROCEDURAL AND FACTUAL BACKGROUND

Yucca has a direct and substantial legal interest in the validity and enforcement of the ordinances adopted by the BOCC authorizing the proposed development (“Project Jupiter”) in Santa Teresa, New Mexico. As a named party in the IRB and Local Economic Development Act (“LEDA”) Applications that resulted in the challenged ordinances, Yucca would be immediately and significantly affected by any order vacating, staying, or enjoining these ordinances.¹ Yucca’s leadership and consultants led and facilitated much of the public engagement process for both the IRB and LEDA Applications. As a result of Yucca’s IRB and LEDA Applications, the BOCC adopted three ordinances related to Project Jupiter: Ordinance No. 367-2025 (authorizing the issuance of industrial revenue bonds), Ordinance No. 368-2025 (approving LEDA funding), and Ordinance No. 369-2025 (providing additional LEDA funding through reduced permit fees) (collectively, the “Ordinances”).

Yucca played a central and indispensable role throughout the Project Jupiter proceedings. As a named party in the adopted Ordinances, Yucca’s involvement was foundational to Jupiter Project’s approval. Yucca was the applicant who answered Commission questions at the hearings, and also actively participated in the public process, including by making presentations at the BOCC’s public hearings on August 26, 2025, and September 19, 2025, and is specifically referenced in the text of the adopted Ordinances.

On October 17, 2025, *prior to any request of the BOCC to stay or review its decision*, Petitioners filed their Petition for Writ of Certiorari, or in the alternative, a Complaint for Declaratory

¹ See Petitioner’s Petition for Writ of Certiorari or in the Alternative Complaint for Declaratory Judgment (Pet.), Ex.1, p.2 lines 4-7; Ex. 2, p.1 lines 7-10; Ex. 3, p.1 caption (naming Yucca). These exhibits each clearly name Yucca as a party-of-interest under each ordinance action.

Judgment, challenging the validity of the Ordinances. The Petition, identifying BOCC as the sole respondent, alleges that the Ordinances were adopted based on incomplete applications and procedural irregularities, and seeks to have the Ordinances vacated and their implementation enjoined. Shortly thereafter, on October 21, 2025, Petitioners filed an expedited Motion for Stay, requesting the Court to suspend enforcement of the Ordinances pending judicial review. One week later, on October 28, 2025, Petitioners filed their Motion for Temporary Restraining Order, asking the Court to enjoin the BOCC from implementing and enforcing the Ordinances or releasing any funds or bonds pursuant to the Ordinances.

ARGUMENT

I. The Petitioners Failed to Include all Necessary Parties.

Petitioners have filed this proceeding under Rule 1-075 which permits the filing of a petition for writ of certiorari to review the decisions of administrative officers and agencies pursuant to the New Mexico Constitution. Rule 1-075 NMRA. Rule 1-075 states:

- E. Service of notice of review.** At the time the petition is filed, the petitioner shall:
- (1) *serve each party or such party's attorney in the administrative proceedings* with a copy of the petition in the manner provided by Rule 1-005 NMRA;
 - (2) file proof of service in the district court that a copy of the petition has been served in accordance with Rule 1-005 NMRA; and
 - (3) file a certificate in the district court that satisfactory arrangements have been made with the agency for preparation and payment for the transcript of the proceedings.

Rule 1-075 NMRA (emphasis added).

As stated above, Yucca was a signatory to the IRB Application² and was a named party in the adopted Ordinances. On the face of the Ordinances, Yucca is a necessary party to this proceeding. In fact, Petitioners failed to include any of the actual applicants. Thus, service has not been effectuated under Rule 1-07(E)(1).

² See Pet. Ex. 5 (IRB Application).

Under Rule 1-075, after the filing of the petition, any party may file a motion to raise the defense of “failure to join a party under Rule 1-019 NMRA.” Rule 1-075(P) NMRA. Under Rule 1-019, a party “shall be joined as a party” if “he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may: (a) as a practical matter impair or impede his ability to protect that interest; . . .” Rule 1-019(A)(2) NMRA.

Yucca is clearly a necessary party under Rule 1-019 as one of the parties that applied for the Ordinances that Petitioners now seek to review. The New Mexico Supreme Court, in *New Energy*, has made clear that parties who “contributed evidence that directly informed the inquiries made by [the agencies] in making their final decisions” and who “participated in the rule-making proceedings” have “a *right* to defend their positions as parties on appeal.” *New Energy Econ., Inc.*

v. Vanzi, 2012-NMSC-005, 274 P.3d 53, 62. (emphasis added). Yucca can only “defend [its] positions as parties on appeal” if it is joined as a party, as required by Rule 1-019(A)(2).

The record is clear that Petitioners failed to include Yucca as a party and have failed to serve their Petition upon Yucca.

While the Petitioners may claim that this failure to join Yucca is merely a technical matter, New Mexico courts are clear that service and inclusion of necessary parties implicates substantive rights, not technicalities. In *La Mesa Racetrack v. State Racing Comm’n*, the Court of Appeals addressed a petition that was erroneously filed under Rule 1-074 instead of Rule 1-075. The parties agreed, and the court proceeded, as if this mistake was a “technical error” that did not affect substantive rights. See *La Mesa Racetrack*, 2013 WL 4516402, at *3.

However, unlike a mere citation to the wrong rule, the service of notice of review implicates substantive rights. As the court explained in *Wirtz v. State Educational Retirement Board*, “[f]ailure to give notice violates the most rudimentary demands of due process of law.” 1996-NMCA-085, 122 N.M. 292, 923 P.2d 1177, 1181 (internal quotations and citations omitted). In other words, proper service is

not a technicality—it is a fundamental requirement of due process. Furthermore, despite the fact that intervention has now been granted, not every necessary party or applicant has actually been joined in the case by Petitioners. despite our joinder the “failure to serve us was a violation of due process,” which is not just a “technical violation.” *Wirtz v. State Educ. Ret. Bd.*, 1996-NMCA-085, 122 N.M. 292, 923 P.2d 1177, 1181 (“Failure to give notice violates the most rudimentary demands of due process of law.”). Indeed, upon hearing rumors that a motions was being filed for a temporary restraining order, counsel for Yucca stated that that she was only providing copies of the motion to the TRO to proper parties in the case, indicating that a copy of the emergency motion would be available publicly to others once it is served. Despite this stance, Petitioners appear to have read Rule 1-075(E) and sought to comply with its other requirements. This is not proper. Petitioner’s counsel was aware of who the real parties in interest are in this litigation the and she is purposefully trying to cherry-pick who is afforded a chance to defend their interests in the case and who is not– even though they had been contacted by counsel, and are still choosing refuse to not properly serve those parties or agree to allow their participation.

Here, Petitioners cannot justifiably argue that their failure to include the three (3) applicants is merely technical. Instead, Petitioners’ failure is an obvious violation of the clear language of Rule 1-075. Thus, dismissal is required under Rule 1-075(P)(4).

II. Petitioners’ Claims for Declaratory Judgment Fail to State a Claim for Relief

The crux of Petitioners’ action is that the BOCC acted arbitrarily and capriciously—a fact intensive inquiry unsuitable in the context of a declaratory judgment action.

New Mexico law recognizes the availability of declaratory judgments to test the validity or construction of municipal ordinances. See NMSA 1978, § 44-6-4. This statute permits “[a]ny person ... whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise” to seek a declaration regarding the validity of the ordinance. The New Mexico courts have affirmed that the Declaratory Judgment Act is an appropriate procedural tool for resolving

purely legal challenges to the constitutionality or validity of local laws. *See Smith v. City of Santa Fe*, 2007-NMSC-055, ¶ 14; *Balizer v. Shaver*, 1971-NMCA-010, ¶ 13, 82 N.M. 347, 349, 481 P.2d 709, 711.

A challenge to a ruling by an administrative agency, on the other hand, questions whether the ruling “is unreasonable or without a rational basis, when viewed in light of the whole record.” *Rio Grande Chapter of Sierra Club*, 2003-NMSC-005, ¶ 17, 133 N.M. 97, 61 P.3d 806; *Hernandez v. Mead Foods, Inc.*, 104 N.M. 67, 71 (Ct. App. 1986) (“The question is not whether substantial evidence would have supported an opposite result; it is whether such evidence supports the result reached.”); *Board of Educ. of the City of Albuquerque v. N.M. State Bd. of Educ.*, 88

N.M. 10, 11, 536 P.2d 274, 275 (Ct. App. 1975) (“The determination of whether a decision is arbitrary, capricious and unreasonable is not a question separate and apart from whether the decision is supported by substantial evidence.”).

Declaratory judgment actions are not permitted where they are used to circumvent the established fact-finding procedures or specialized expertise of an administrative agency. The New Mexico Supreme Court has made clear that declaratory relief is improper if it would bypass necessary agency fact-finding, ignore an agency’s technical expertise, disrupt exclusive statutory review mechanisms, or otherwise circumvent procedural or substantive limitations provided by law. *Smith*, 2007-NMSC-055, ¶ 15. Consistent with this, New Mexico courts have emphasized that declaratory judgment is appropriate only for “purely legal challenges that require no factual determinations by the agency.” *Grand Lodge of Ancient & Accepted Masons of New Mexico v. Taxation & Revenue Dep’t of State of N.M.*, 1987-NMCA-081, ¶ 21, 106 N.M. 179, 182, 740 P.2d 1163, 1167.

Petitioners’ claims here are not confined to abstract legal questions or the facial validity of the ordinance itself. Rather, the alleged errors center on highly specific factual disputes that fall squarely within the BOCC’s purview. For example, Petitioners challenge “the fact that the Application the Board

relied on did not provide enough information” and claim “the Board did not have sufficient information to render a fully-informed decision.” They dispute whether a separate LEDA application was filed, and question “whether sufficient facts exist to show that Project Jupiter is a qualified entity under one of the scenarios listed under the LEDA statute.” Each of these issues turns on the adequacy and content of documents actually submitted, the state of the administrative record, and the BOCC’s fact-based determinations regarding statutory criteria and qualifications.

These are precisely the kinds of matters that require the agency’s specialized fact-finding and expertise, and are subject to review only through the procedures established for administrative appeals. When a party seeks review of an administrative action—such as the BOCC’s assessment of an applicant’s qualifications and the sufficiency of their submissions—the proper course is an appeal pursuant to Rule 1-075 NMRA, not a declaratory judgment action. *See Smith*, 2007-NMSC- 055, ¶ 15. Allowing Petitioners to proceed by way of declaratory judgment in this context would improperly invite the Court to substitute its judgment for the agency on contested factual matters and would circumvent the Legislature’s intended exclusive review process.

Because Petitioners’ declaratory judgment claims necessarily involve factual disputes— for example, whether adequate information was provided, whether required applications were filed, and whether the facts show that Project Jupiter qualifies under the LEDA statute—their claims do not fall within the narrow, purely legal category that is amenable to declaratory relief. The Court should therefore dismiss the declaratory judgment causes of action for failure to state a claim for which relief can be granted, and direct Petitioners to pursue any available relief through the requisite administrative appeal process.

CONCLUSION

For all of the foregoing reasons, Yucca respectfully requests that the Court grant this motion and dismiss Petitioners’ Petition. Yucca prays for such other and further relief to which it may be justly

entitled.

Dated: October 30, 2025

Respectfully submitted,

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***Attorneys for Third-Party Intervenor Yucca Growth
Infrastructure, LLC***

CERTIFICATE OF SERVICE

I hereby certify that a copy of this document was filed through the Court's electronic filing system this Wednesday, October 29, 2025, and served on all parties of record.

/s/ James M. Feuille

James M. Feuille