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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

CITY OF CORONADO, a municipal corporation; CITY OF IMPERIAL BEACH, a municipal corporation; CITY OF LEMON GROVE, a municipal corporation; CITY OF SOLANA BEACH, a municipal corporation,

Petitioners,

v.

SAN DIEGO ASSOCIATION OF GOVERNMENTS, a joint powers authority; BOARD OF DIRECTORS OF THE SAN DIEGO ASSOCIATION OF GOVERNMENTS; and DOES 1-25,

Respondent.

Case No. 37-2020-00033974-CU-MC-CTL

EXEMPT FROM FEES (GOV. CODE §6103)

VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

[CCP § 1094.5]

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Attorneys at Law

Petitioners and Plaintiffs CITY OF CORONADO, CITY OF IMPERIAL BEACH, CITY OF LEMON GROVE, and CITY OF SOLANA BEACH (hereby file this Petition for Writ of Mandate against Respondents and Defendants SAN DIEGO ASSOCIATION OF GOVERNMENTS and BOARD OF DIRECTORS OF THE SAN DIEGO ASSOCIATION OF GOVERNMENTS, and allege as follows:

PARTIES

1. Petitioner CITY OF CORONADO ("CORONADO") is an incorporated city with administrative offices located in the City of Coronado, California. CORONADO is a general law city governed by a five-member City Council.

2. Petitioner CITY OF IMPERIAL BEACH ("IMPERIAL BEACH") is an incorporated city with administrative offices located in the City of Imperial Beach, California. IMPERIAL BEACH is a general law city governed by a five-member City Council.

3. Petitioner CITY OF LEMON GROVE ("LEMON GROVE") is an incorporated city with administrative offices located in the City of Lemon Grove, California. LEMON GROVE is a general law city governed by a five-member City Council.

4. Petitioner CITY OF SOLANA BEACH ("SOLANA BEACH") is an incorporated city with administrative offices located in the City of Solana Beach, California. SOLANA BEACH is a general law city governed by a five-member City Council.

5. Respondent SAN DIEGO ASSOCIATION OF GOVERNMENTS is a joint powers authority formed pursuant to the Joint Exercise of Powers Act and is the council of governments designated by Government Code section 65584.04 to carry out the methodology and allocation of regional housing needs required by that section ("RHNA Allocation").

6. Respondent BOARD OF DIRECTORS OF THE SAN DIEGO ASSOCIATION OF GOVERNMENTS ("the Board") are the members of the elected governing board of Respondent SANDAG. (SANDAG and its Board are referred to herein collectively as "Respondents" or as "SANDAG" unless otherwise specified.)

7. Petitioners are currently not aware of the true names and capacities of those parties named herein as DOES 1 through 25, inclusive, and therefore sues those Respondents by such fictitious names,

although Petitioners are informed and believe that such additional parties participated in the unlawful actions set forth herein or are otherwise subject to liability or equitable or injunctive relief as set forth herein. Petitioners may amend this Petition to allege the true names and capacities of these fictitiously named Respondents when they have been ascertained.

JURISDICTION AND VENUE

8. Relief is sought here under Code of Civil Procedure section 1094.5 against SANDAG for its failure to comply with its duties under Government Code section 65584.04 and Public Utilities Code section 132351.2. Pursuant to Government Code section 65584.04, a hearing is required, notice must be given, and oral and written comments are required to be taken. (Gov. Code, § 65584.04, subd. (d).)

9. Petitioners have exhausted their administrative remedies at SANDAG.

10. Venue properly lies in the Superior Court of the County of San Diego because SANDAG has its offices in the County of San Diego and the acts alleged herein occurred there.

11. Due to the nature of this dispute and the identity of the parties, Petitioners request that a retired judge from outside the County be assigned to this case.

FACTUAL BACKGROUND

12. This action arises from SANDAG's abuse of discretion in carrying out its duties under Government Code section 65584.04, including its failure to provide a fair hearing and approval due to its utilization of weighted voting under Public Utilities Code section 132351.2 in a quasi-judicial proceeding.

13. The Appellants also did not receive a fair hearing because certain members of SANDAG's Board of Directors ("the Board") were biased against Appellants. These Board Members' decision to deny the appeals was predetermined. Therefore, Appellants did not receive a fair hearing on the Appeals because these Board Members did not act as neutral and impartial decisionmakers.

14. The Final RHNA Allocation was preceded by and predicated upon these prejudicial abuses of discretion. Because the weighted vote on the Appeals was improper and the Appellants were not afforded neutral and impartial decisionmakers, the Court should order: (1) that the Final RHNA Allocation approval by SANDAG be rescinded, (2) that SANDAG's denial of the Appeals be rescinded,

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(3) that the Appeals be remanded to SANDAG its consideration, and (4) that SANDAG be prohibited from utilizing a weighted vote on the Appeals.

A. SANDAG's RHNA Process

15. The Regional Housing Needs Assessment ("RHNA") is mandated by state law. It quantifies the need for housing and informs land use planning by addressing identified existing and future housing needs resulting from population, employment, and household growth.

16. As the council of governments, SANDAG is responsible for overseeing the RHNA process for the San Diego region.

17. SANDAG most recently carried out the 6th Cycle RHNA, which covers the planning period from 2021-2029.

18. The California Department of Housing and Community Development ("HCD"), in consultation with SANDAG, calculated a regionwide housing need determination, which informs SANDAG of how many housing units it must allocate. HCD provided SANDAG with a regional housing needs determination of 171,685 units distributed to four income categories: very low (24.7%); low (15.5%); moderate (17.3%); and above-moderate (42.5%) for the Sixth Cycle ("RHNA Determination"). As part of the RHNA process, SANDAG was required to allocate the total number of housing units among its member jurisdictions, who would then update their respective jurisdiction's General Plan Housing Element to include the allocated housing units in each income category.

19. SANDAG and its member agencies were required to prepare a draft methodology for allocating a share of the RHNA Determination to each jurisdiction ("Methodology"). SANDAG established a RHNA Subcommittee for the purpose of working with SANDAG Staff to create a draft Methodology to recommend to the Board. At a meeting held on June 14, 2019, SANDAG Staff presented its recommended draft Methodology to the RHNA Subcommittee. During discussion on the draft Methodology presented by Staff, a second option was proposed by members of the RHNA Committee, which included an adjustment to account for military housing. After a robust debate, a motion to send both draft Methodologies to the Board failed. A motion was then made to recommend the draft Methodology with the adjustment for military housing. That motion passed and, as a result, the RHNA

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Subcommittee recommended the draft Methodology with the military housing adjustment to the Board for consideration.

20. Despite its rejection by a majority of the RHNA Subcommittee, SANDAG Staff nevertheless recommended approval of its own draft Methodology at SANDAG's September 6, 2019, meeting, without the military housing adjustment. A motion was made to adopt the Staff-recommended draft Methodology and a Board Member attempted to amend the motion to include the military housing adjustment. That amendment was rejected by the Chair. On a tally vote, the motion to approve the Staff-recommended draft Methodology failed. Two jurisdictions then requested a weighted vote on the motion and the motion passed on a weighted vote by a minority of jurisdictions. As a result, a minority of the Board members acted to adopt the draft Methodology that had been rejected by the RHNA Subcommittee. The Board directed staff to submit the draft Methodology HCD for review. On November 1, 2019, HCD determined that the Draft Methodology met state standards.

21. On November 22, 2019, SANDAG adopted the draft Methodology as its final Methodology by a weighted vote, over the objections of the region's smaller communities, including the Petitioners.

22. On November 22, 2019, SANDAG also released the Draft Allocation, which is calculated based on the RHNA Methodology.

B. Appeals are Filed by Petitioners City of Coronado, the City of Imperial Beach, the City of Lemon Grove, and the City of Solana Beach

23. RHNA allocations came into being in the Housing Element Act of 1969. Since that time, SANDAG has successfully adopted methodologies for five RHNA cycles that were the result of regional consensus. Prior to the current 6th Cycle, SANDAG's Draft Allocations had never been subject to an appeal.

24. On January 6, 2020, CORONADO, IMPERIAL BEACH, LEMON GROVE, and SOLANA BEACH (collectively, the "Appellants") filed appeals of SANDAG's Draft Allocation (collectively the "Appeals"). The Appeals were filed in accordance with Government Code section 65584.05 and requested a revision of the share of the regional housing need allocation under the RHNA

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Methodology adopted for the 6th Cycle. The Appeals stated that a revision to the Draft Allocation was necessary to further the intent of the statutorily mandated objectives listed Government Code Section 65584, subdivision (d).

C. CORONADO'S Appeal

25. CORONADO'S allocation of new housing units increased dramatically from **50** housing units allocated in the 5th RHNA Cycle adopted in 2011 to **1,001** new housing units in the Draft Allocation for the 6th RHNA Cycle.

26. CORONADO's Appeal was brought on the grounds that: (a) SANDAG failed to adequately consider the information submitted pursuant to Government Code Section 65584.04(b); and (b) SANDAG failed to determine the share of the regional housing need in accordance with the information described in, and the methodology established pursuant to, Government Code Section 65584.04, and in a manner that furthers, and does not undermine, the intent of the objectives listed in Government Code Section 65584, subdivision (d).

27. **Military Housing and Jobs.** CORONADO argued that most active duty military personnel live in no-cost (i.e., affordable) on-base housing, aboard ships, or in government subsidized off-base military housing. The Draft Allocation accounted for active duty military jobs but inexplicably ignored military housing provided by the U.S. Government. This effectively required member agencies with military installations to plan for additional housing for employees who are already housed in either no-cost or low-cost housing provided by the federal government. The draft Methodology that was approved by the RHNA Subcommittee accounted for this military housing issue, but that draft Methodology was not recommended by Staff to the Board and was not adopted by the Board at its September 6, 2020, meeting.

28. **Lack of Land Use Authority Over 71% of the City.** CORONADO's appeal also argued that the dramatic jump from 50 units to 1,001 allocated units failed to take into account that approximately 71% of the City's total land area (~7.7 square miles) falls under the jurisdiction of the U.S. Navy, the Unified Port District of San Diego, and the California Department of Parks and Recreation. CORONADO has no land use authority over these areas and consequently cannot consider

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these areas when planning for future housing. The remaining 2.2 square miles that fall under CORONADO'S direct land use authority are densely developed with a high concentration of multi-family housing. Only 1.0 square mile of land is available in CORONADO to accommodate the proposed 1,001 housing units that were the subject of CORONADO'S appeal of the RHNA Allocation.

29. **Coastal Zone Restrictions**. CORONADO argued in its appeal that the entire City of Coronado is within the Coastal Zone and therefore subject to the Coastal Zone Conservation Act. CORONADO's Coastal Zone designation was enacted to protect public access to the coast, to promote visitor-serving uses and to limit residential development and speculation along the coast. CORONADO asserted that the addition of 1,001 new housing units would undermine these objectives.

30. **Lack of Equity.** CORONADO'S appeal further argued that the proposed allocation represented a **2,000%** increase from its prior RHNA allocation and is disproportionately higher than the increase proposed for any other city in the region.

D. IMPERIAL BEACH'S Appeal

31. IMPERIAL BEACH'S new housing unit allocation was raised dramatically from **254** units in the 5th RHNA Cycle in 2011 to **1,375** units in the current 6th RHNA Cycle.

32. IMPERIAL BEACH'S appeal was based on the grounds that: (1) SANDAG failed to adequately consider the information submitted pursuant to subdivision (b) of Government Code section 65584.04; and (2) SANDAG failed to determine the share of the regional housing need in accordance with the information described in, and the methodology established pursuant to, Section 65584.04, and in a manner that furthers, and does not undermine, the intent of the objectives listed in subdivision (d) of section 65584.

33. **Allocation Based on Major Transit Stops Hinders Fair Housing.** SANDAG's Draft Methodology focused on a new concept for the RHNA allocation – reliance on the existence of a "Major Transit Stop" as a determining factor for the allocation of housing units. A Major Transit Stop is a low investment bus stop that does not procure development opportunities because it is easily moved and may be moved by transit providers without City consent. SANDAG utilized a definition of Major Transit Stops that resulted in an inflated and disproportionate allocation to the lower income communities south

of Interstate 8 ("I-8"). Most communities in the higher income region north of 1-8 did not receive any Major Transit Stops housing unit allocation. Without question, IMPERIAL BEACH is the lowest median income and lowest housing price beach community in Southern California, but was allocated five times more housing units in this RHNA cycle than in the last cycle due to the utilization of Major Transit Stops. IMPERIAL BEACH therefore argued that the Draft Allocation hinders fair housing because it results in 95% of all the Major Transit Stops residential unit allocation in a subregion that has a significantly higher proportion of populations in need of fair housing.

34. **Unreachable Development Expectations.** Based upon the 1,375 units allocated, IMPERIAL BEACH would need approximately 172 housing units constructed each year. This yearly allocation is patently unrealistic given that IMPERIAL BEACH is a built out City. "Greenfield" development is effectively non-existent in IMPERIAL BEACH. For example, from 2013 through 2016, a total of only 59 units were constructed or approximately 15 per year. From 2017 to date, IMPERIAL BEACH experienced the largest residential development projects in its history, including one project with approximately 167 units, resulting in 292 total units, or approximately 98 per year. Thus, the 6th Cycle RHNA Allocation requires IMPERIAL BEACH to plan for 172 units each year when the largest number of units it has ever had in its entire history as a city is almost half that.

E. LEMON GROVE'S Appeal

35. LEMON GROVE'S new housing unit allocation was raised from **309** units in the 5th RHNA Cycle in 2011 to **1,359** units in this RHNA Cycle.

36. LEMON GROVE'S appeal was based on the grounds that: (a) The Draft Allocation disproportionately allocated housing units to jurisdictions based on the existence of transit stations within their boundaries regardless of whether those stations are used by neighboring jurisdictions and the extent of the use by neighboring jurisdictions and their populations; and (b) the proposed equity adjustment in the Draft Allocation does not adequately account for established higher density small cities with low income populations higher than the region average, which will have the effect of displacing low-income families that rely on transit services effectively undermining the objectives identified in Government Code section 65584.

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37. **Failure to Promote Fair Housing and Socioeconomic Equity.** LEMON GROVE argued in its appeal that the equity adjustment in the Draft Allocation did not account for higher-density, small cities with low-income populations that are higher in number than the region's average. This failure undermines the fair housing objective set forth in Government Code section 65584, subdivision (d)(5). Under the Draft Allocation, rapid and concentrated growth in already dense, low-income communities of color, like LEMON GROVE, will displace low-income families without providing alternatives and over-stress a community's resources like schools, parks, and open space. Existing older housing stock that is available at lower rental rates will be demolished to make way for above-moderate-income housing. SANDAG's Regional Housing Progress Report shows that lower income housing goals are not being met and this policy decision only serves to displace lower income households without generating replacement housing. Similarly, the Draft Allocation's reliance on Major Transit Stops for the assignment of transit-oriented growth only compounds segregated living patterns, limits housing type and tenure, and discourages integrated and balanced living patterns. On that basis, LEMON GROVE concluded in its appeal that the Draft Allocation exacerbates ethnic and socioeconomic division in direct defiance of the objectives identified in Government Code section 65584, subdivision (d).

38. **Unreachable Development Expectations.** LEMON GROVE also argued in its appeal that it lacks sufficient vacant land to accommodate the units assigned to it in the Draft Allocation.

39. **Jurisdictional Boundary Issues.** LEMON GROVE argued in its appeal that approximately 30% of the walkable area surrounding the two LEMON GROVE transit stations is within the Cities of San Diego and La Mesa and that housing units allocated to LEMON GROVE should be proportionally distributed to the Cities of San Diego and La Mesa to encourage housing development that supports the two transit stations. This failure undermines the infill development objective set forth in Govt. Code 65584, subdivision (d)(4), by encouraging inefficient development patterns surrounding transit stations. On that basis, LEMON GROVE concluded in its appeal that the methodology unfairly focuses on the addresses of the transit stations, rather that the surrounding area that the transit station serves, thus encouraging inefficient development patterns. This analysis is further supported by the location of a transit station in the unincorporated County near the City of Vista. In this example, 10% of

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the area surrounding the transit station is within the City of Vista, but the methodology fails to consider the jurisdictional boundary and allocates housing units to the unincorporated County. This failure again undermines the infill development objective set forth in Govt. Code 65584, subdivision (d) (4), by allocating units to the unincorporated County which will further increase vehicle miles travelled and greenhouse gas emissions, rather than encourage efficient development patterns surrounding the transit station.

F. SOLANA BEACH'S Appeal

40. SOLANA BEACH'S new housing unit allocation was raised from **340** units in the 5th RHNA Cycle in 2011 to **875** units in the Draft Allocation for the current 6th RHNA Cycle.

41. SOLANA BEACH'S appeal was brought on the grounds that: (a) SANDAG failed to adequately consider the information submitted pursuant to Government Code Section 65584.04(b); and (b) SANDAG failed to determine the share of the regional housing need in accordance with the information described in Government Code Section 65584.04, and in a manner that furthers, and does not undermine, the intent of the objectives listed in Government Code Section 65584(d).

42. **Unreachable Development Expectations.** SOLANA BEACH argued in its appeal that SANDAG failed to consider information related to constraints on development and, as a result, its allocation was based on unrealistic expectations for development in the city. SOLANA BEACH has only six noncontiguous commercial or multi-family parcels in its jurisdictional limits and they total a mere 3.31 acres of vacant, undeveloped land available for development. SOLANA BEACH contains an additional eight noncontiguous vacant residential parcels that total 2.74 acres. Accordingly, the average lot size of these fourteen non-contiguous parcels averages 0.43 acres, which is much less than the HCD-preferred one- to ten-acre lot size for housing development. Any other parcels identified for future housing development would require that existing developed properties be demolished to make way for housing development, which HCD and the Legislature have identified as a major constraint.

43. **Coastal Zone Restrictions.** SOLANA BEACH also appealed on the basis that the entirety of SOLANA BEACH is located within the California Coastal Zone, which creates additional restrictions and limitations on development, particularly residential development. The RHNA allocation

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is inconsistent with the Coastal Act in that the demand for housing production (i.e., residential development) is the lowest priority land use within the Coastal Act. The Coastal Act and the California Coastal Commission oppose allowing cities to intensify or prioritize residential use over visitor-serving development and coastal-dependent uses which would otherwise create an adverse impact on coastal access to the general public.

44. **Unreasonable Reliance on Single Train Stop.** SOLANA BEACH argued in its appeal that it was unreasonable to increase its allocation based upon the single train station within its city limits. SOLANA BEACH is the smallest jurisdiction with a train station in San Diego County. While SOLANA BEACH'S train station provides Coaster and Amtrak service, the Draft Allocation failed to recognize that, given SOLANA BEACH'S small size, this train station serves a much wider geographic region and a greater commuter population than that of SOLANA BEACH alone. The SOLANA BEACH train station is within extremely close proximity to four other jurisdictions; the Cities of Del Mar and Encinitas are within 1 mile of the Solana Beach train station and the City and County of San Diego are within 2 miles. Reliance on this train station resulted in an inflated housing unit allocation to SOLANA BEACH.

G. SANDAG Adopts Appeal Procedures that Include Weighted Voting

45. After the Appeals were filed, SANDAG published procedures for the appeals process. In response, three jurisdictions submitted objections, including an objection that the Appeals were quasi-judicial in nature and therefore should be decided by a tally vote and not a weighted vote.

46. The appeals process and the related objections were discussed in a SANDAG Executive Committee meeting on February 14, 2020. Objections to the use of a weighted vote were disregarded and the appeal procedures that included the weighted vote on the Appeals were approved.

H. Weighted Voting is Utilized to Deny the Appeals on June 26, 2020

47. On June 24, 2020, knowing that all approvals in the RHNA process thus far were only accomplished through a weighted vote by a minority of jurisdictions, Petitioners submitted a joint letter to SANDAG. The letter again objected to the use of the weighted vote in the context of the quasi-judicial appeals because the weighted vote would deny the appealing jurisdictions a fair hearing. Three of the

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four Petitioners also provided additional grounds for their appeals related to Covid-19 and a revised, lower population projection from the Department of Finance.

48. The Appeals were brought for a statutorily required public hearing before SANDAG on June 26, 2020. In connection with that hearing, SANDAG issued draft written determinations on each of the Appeals. The draft written determinations included a minor revision to the Draft Allocation of CORONADO, from 1,001 to 912 units, but rejected the balance of CORONADO's Appeal and the entirety of the remaining Appeals.

49. A motion was made to grant the appeals and that motion was seconded. Prior to a vote on the motion to grant the appeals, a substitute motion was made to adopt the staff recommendation as stated in the draft written determinations, which essentially rejected the appeals with the exception of one modification to CORONADO'S allocation.

50. The substitute motion to adopt the draft written determinations was seconded and brought to a tally vote. The motion failed on a tally vote with only 5 jurisdictions in favor of the motion. A weighted vote was then called, which resulted in the adoption of the written determinations, and the rejection of the appeals with the exception of 1 modification to CORONADO's allocation. Only 5 of the 18 jurisdictions present voted in favor of the motion. Of the 55 weighted votes cast in favor of rejecting the appeals, 42 votes were cast by the City of San Diego. The remaining 13 votes were cast by 4 jurisdictions: Chula Vista (8 votes), Del Mar (1 vote), Encinitas (2 votes), and National City (2 votes). The other 13 jurisdictions present voted no.

51. Petitioners allege on information and belief that certain members of the Board of Directors, who participated in the vote on the Appeals, made public and private statements up to and during the hearing on the Appeals evidencing that their decision was predetermined. These members of the Board of Directors failed to act as neutral decisionmakers on the Appeals.

I. Without the Support of a Majority of Jurisdictions, SANDAG Adopts the Final RHNA Allocation

52. On July 10, 2020, SANDAG considered the Final RHNA Allocation.

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53. A motion was made to reject the Final RHNA Allocation. Before that motion could be voted on, a substitute motion was made to approve the Final RHNA Allocation. Again, the tally vote failed to garner enough votes to approve the Final RHNA allocation, with 68 percent of the Board voting no. A motion was then made to use a weighted vote.

54. Before a weighted vote was taken, several Board Members objected to the use of the weighted vote on the grounds that it disenfranchises a supermajority of the Board, disenfranchises over 1 million residents that the Board Members represent, and is counterproductive to the region's goals.

55. On that basis, nine jurisdictions refused to participate in the weighted vote on the Final Allocation.

56. The motion passed with a weighted vote of the members present, with six jurisdictions voting in favor of approving the Final Allocation.

FIRST CAUSE OF ACTION

Writ of Mandate: Prejudicial Abuse of Discretion Under Public Utilities Code Section 132351.2 and Government Code Section 65584.04

(Code Civ. Proc., § 1094.5)

57. Plaintiff re-alleges and incorporates by this reference each and every allegation contained in the foregoing paragraphs of this Petition as though fully set forth herein again.

58. Government Code section 65584.05, subdivision (b), allows a local government to appeal to SANDAG for a revision to its share of the regional housing needs allocation.

59. Once an appeal is filed, notice must be given all other local governments in the region and SANDAG must make all the materials submitted in support of each appeal available on its website. (Gov. Code, § 65584.05, subd. (c).) Local governments are then allotted 45 days to comment on one or more of the appeals. (*Ibid*.)

60. Government Code section 655854.05 also requires that a public hearing be held to consider all of the appeal and the comments received no later than 30 days after the close of the comment period. (Gov. Code, § 65584.05, subd. (d).) Notice is required to be given to the local governments at least 21 days prior to the public hearing. (*Ibid*.)

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61. Within 45 days after the public hearing, SANDAG must: (1) make a final determination, in writing with written findings, that either accepts, rejects, or modifies each appeal for a revised share filed pursuant to subdivision (b); and (2) issue a proposed final allocation plan. (Gov. Code, § 65584.05, subd. (e).) The written findings required by section 65584.05, subd. (d), must state how the determination on the appeal is consistent with the RHNA statutes. (*Ibid*.)

62. Thus, Government Code section 65584.05 requires that notice be given, that material in support of the appeal be submitted and made available, that an opportunity to comment on the appeals be given to all jurisdictions, that a public hearing be held, that a final written determination on the appeals must be made, and that the determination be supported by written findings. Thus, SANDAG's consideration of the Appeals required SANDAG to take quasi-judicial, adjudicatory action.

63. Because the appeals process is an adjudicatory action, and SANDAG Board Members act in the role of judges when voting on the appeals, SANDAG must employ safeguards appropriate to such quasi-judicial proceedings in order to ensure procedural due process. (*Wiltshire v. Superior Court* (1985) 172 Cal.App.3d 296, 304; *Woody's Group, Inc. v. City of Newport Beach* (2015) 233 Cal.App.4th 1012, 1021; *Petrovich Development Company, LLC v. City of Sacramento* (2020) 48 Cal.App.5th 963, 973, review denied.)

64. SANDAG's Bylaws state: "After the tally vote of the Board Members is taken, a weighted vote may be called by the Board Members of any two Member Agencies unless otherwise required by law." (SANDAG Bylaws, § 5.a, emphasis added.) Here, the law required SANDAG, while acting in a quasi-judicial capacity, to use only a tally vote because a weighted vote would violate fundamental tenets of procedural due process, fairness, and equity.

65. When making its final determination on the Appeals, SANDAG took a tally vote on a substitute motion to deny the appeals. That tally vote failed. SANDAG then utilized a weighted vote under Public Utilities Code section 132351.2, which allocates the weighted vote among its member jurisdictions based on population. (Pub. Util. Code, § 132351.2, subd. (c); SANDAG Bylaws, § 5.d.) That weighted vote resulted in a modification to the allocation of Coronado on one of the six issues it raised and a rejection of the remainder of the Appeals.

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66. The Appellants and their citizens were entitled to a fair hearing that employed voting procedures consistent with procedural due process, fairness, and equity. The procedural mechanism of a tally vote, and not a weighted vote, was required to ensure that the appeals were decided fairly and without bias in favor of heavily-populated jurisdictions and bias against less-populated jurisdictions. SANDAG's use of a weighted vote while acting in a quasi-judicial capacity on the appeals is a prejudicial abuse of discretion.

67. While such bias may be acceptable in the legislative decisions that constitute the remainder of the RHNA process, it is a prejudicial abuse of discretion to utilize weighted voting in the appeal proceeding, which was quasi-judicial in nature. Through its actions, SANDAG has prejudicially abused its discretion because it violated the law when it improperly utilized weighted voting for its quasi-judicial decision denying the four appeals filed.

68. The Final RHNA Allocation was preceded by and predicated upon this prejudicial abuse of discretion. Because the weighted vote on the Appeals was improper, the decision on the Appeals is invalid, which renders the Final RHNA Allocation approval invalid.

69. There is not a plain, speedy, and adequate remedy, in the ordinary course of law, to cure SANDAG's failure to comply with the law.

WHEREFORE, Petitioners pray judgment as set forth below.

SECOND CAUSE OF ACTION

Writ of Mandate: Prejudicial Abuse of Discretion for Failure to Provide a Fair Hearing (Code Civ. Proc., § 1094.5)

70. Plaintiff re-alleges and incorporates by this reference each and every allegation contained in the foregoing paragraphs of this Petition as though fully set forth herein again.

71. When functioning in an adjudicatory capacity, the legislative body must be "neutral and unbiased." (*Petrovich Development Company, LLC v. City of Sacramento* (2020) 48 Cal.App.5th 963, 973, review denied; *Wiltshire v. Superior Court* (1985) 172 Cal.App.3d 296, 304; *Woody's Group, Inc. v. City of Newport Beach* (2015) 233 Cal.App.4th 1012, 1021.) "[A]llowing a biased decision maker to participate in the decision is enough to invalidate the decision." (*Ibid*.) To overturn a decision based on

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bias, a petitioner need not show actual bias, but must show an unacceptable probability of actual bias on the part of the decisionmaker. (*Woody's Group, Inc. v. City of Newport Beach* (2015) 233 Cal.App.4th 1012, 1021-1022.)

72. Petitioners allege on information and belief that certain members of the Board of Directors, who participated in the vote on the Appeals, made public and private statements up to and during the hearing on the Appeals evidencing that their decision was predetermined. These members of the Board of Directors failed to act as unbiased, neutral decisionmakers on the Appeals, rendering the decision on the Appeals invalid.

73. Petitioners are informed and believe, and thereon allege, that Respondents were improperly influenced by inadmissible factors, including bias and hostility, ex parte communications, arguments, political pressure, threats and inducements outside the public record, had improperly reached a decision before the public hearing was even opened, and wrongfully deprived Petitioners of their rights to a fair and impartial quasi-adjudicatory hearing, with no rational basis or justification.

74. Because the Appellants were not afforded a fair hearing, SANDAG prejudicially abused its discretion.

75. The Final RHNA Allocation was preceded by and predicated upon this prejudicial abuse of discretion. Because the Appellants were not afforded neutral and impartial decisionmakers, the decision on the appeals is invalid, which renders the Final RHNA Allocation invalid.

WHEREFORE, Petitioners pray judgment as set forth below.

THIRD CAUSE OF ACTION

Declaratory and Injunctive Relief

76. An actual controversy exists between Petitioners and Respondents, involving substantial questions regarding Respondents' arbitrary action on the Appeals, the proper interpretation and application of state law and SANDAG's Bylaws, as set forth above, and with regard to the parties' respective rights and duties thereunder.

77. Petitioners maintain that Respondents' action on the Appeals violated state law and SANDAG's Bylaws.

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78. Petitioners further contend that Respondents' actions denied Petitioners a fair and impartial hearing, and the Board's actions were the result of prejudicial bias, procedural improprieties, and errors.

79. Petitioners are informed and believe, and thereon allege, that Respondents' action on the Appeals was inconsistent with and violates provisions of state law assuring and protecting rights to a fair hearing and procedural due process.

80. Petitioners are informed and believe, and thereon allege, that Respondents dispute the foregoing contentions and maintain the contrary, such that an actual controversy now exists between the parties. Accordingly, declaratory relief is appropriate and necessary to determine the controversy and to judicially declare the invalidity of Respondents' actions, practices, and policies in rejecting the Appeals.

81. Petitioners have no adequate remedy at law to redress the errors and abuses described above, or to prevent or mitigate the harms and irreparable injuries resulting therefrom, and have exhausted all available administrative remedies. Issuance of preliminary and permanent injunctive relief may be necessary to provide effective relief.

82. Petitioners seek a judicial declaration that Respondents' actions were invalid and were contrary to law. Such a declaration is a necessary and proper exercise of the Court's power to prevent future actions by Respondents in violation of the law, and Petitioners also seek equitable relief, including but not limited to injunctive relief for the protection and enforcement of Petitioners' rights and to enjoin Respondents to conform their actions, decisions, and conduct of quasi-judicial hearings on RHNA appeals to the requirements of state law for the benefit of the public generally.

WHEREFORE, Petitioners pray judgment as set forth below.

PRAYER FOR RELIEF

WHEREFORE, Petitioners pray for a judgment as follows:

1. That a writ of mandate issues against Respondents as follows:

   a. The Final RHNA allocation approved by SANDAG on July 10, 2020, is rescinded;

   b. SANDAG's denial of the Appeals on June 26, 2020, is rescinded;

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c. SANDAG is ordered to hold a new public hearing on whether to grant or deny the Appeals and shall take all subsequent steps required by law;

d. SANDAG is prohibited from using weighted voting when considering the Appeals; and

e. Any SANDAG Board Member who is found by the Court to have been biased during the original proceeding on the Appeals must recuse herself or himself from participating in the new hearing on the Appeals.

2. For the declaratory relief requested above.

3. For preliminary and/or permanent injunctive relief as requested above.

4. For an aware of Petitioners' cost of suit herein incurred.

5. For such other and further relief as the Court deems just and proper.

Dated: September 24, 2020

SLOAN SAKAI YEUNG & WONG LLP
By:



MADELINE E. MILLER

Attorneys for Petitioners and Plaintiffs CITY OF CORONADO; CITY OF IMPERIAL BEACH; CITY OF LEMON GROVE; CITY OF SOLANA BEACH

VERIFICATION

I have read the foregoing and know its contents.

I am the City Manager for the City of Coronado, authorized to make this Verification on behalf of Petitioner City of Coronado. I have read the foregoing PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF, have knowledge of the matters stated in the foregoing document as they relate to the City of Coronado, and hereby verify that such factual matters are true based my own knowledge, except as to those matters which are stated on information and belief, and as to those matters I am reasonably informed and believe that they are true.

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

Executed on September 22, 2020, at Coronado, California.

Blair King

SLOAN SAKAI YEUNG & WONG LLP
Attorneys at Law

VERIFICATION

I have read the foregoing and know its contents.

I am the Assistant City Manager for the City of Imperial Beach, authorized to make this Verification on behalf of Petitioner City of Imperial Beach. I have read the foregoing PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF, have knowledge of the matters stated in the foregoing document as they relate to the City of Imperial Beach, and hereby verify that such factual matters are true based my own knowledge, except as to those matters which are stated on information and belief, and as to those matters I am reasonably informed and believe that they are true.

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

Executed on September 23, 2020, at Imperial Beach, California.

Erika N. Cortez-Martinez

SLOAN SAKAI YEUNG & WONG LLP
Attorneys at Law

VERIFICATION

I have read the foregoing and know its contents.

I am the City Manager for the City of Lemon Grove, authorized to make this Verification on behalf of Petitioner City of Lemon Grove. I have read the foregoing PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF, have knowledge of the matters stated in the foregoing document as they relate to the City of Lemon Grove, and hereby verify that such factual matters are true based my own knowledge, except as to those matters which are stated on information and belief, and as to those matters I am reasonably informed and believe that they are true.

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

Executed on September 23, 2020, at Lemon Grove, California.

Lydia Romero

SLOAN SAKAI YEUNG & WONG LLP
Attorneys at Law

VERIFICATION

I have read the foregoing and know its contents.

I am the City Manager for the City of Solana Beach, authorized to make this Verification on behalf of Petitioner City of Solana Beach. I have read the foregoing PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF, have knowledge of the matters stated in the foregoing document as they relate to the City of Solana Beach, and hereby verify that such factual matters are true based my own knowledge, except as to those matters which are stated on information and belief, and as to those matters I am reasonably informed and believe that they are true.

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

Executed on September 23, 2020, at Solana Beach, California.

Gregory Wade

SLOAN SAKAI YEUNG & WONG LLP
Attorneys at Law