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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
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Clerk of the Superior Court
By Regina Chanez, Deputy Clerk

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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF SAN DIEGO, CENTRAL DIVISION**
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14 LIVABLE SAN DIEGO, an unincorporated
association,

15 Petitioner,

16 vs.

17 CITY OF SAN DIEGO, a public body corporate
18 and politic, and DOES 1 through 5, inclusive,

19 Respondents,

20 CITY OF SAN DIEGO PLANNING
DEPARTMENT, and DOES 6 through 10,
21 inclusive,

22 Real Parties in Interest.

Case No. 37-2023-00014623-CU-TT-CTL

**VERIFIED PETITION FOR WRIT OF
MANDATE**

(California Environmental Quality Act)

1 **INTRODUCTION**

2 1. This action challenges the approvals by Respondent City of San Diego (“City” or
3 “Respondent”) of the Land Development Code Update 2022 (“Project”) and the related failure to
4 comply with the California Environmental Quality Act (“CEQA”), Pub. Res. Code § 21000, *et seq.*

5 2. Among other things, the City failed to consider the environmental impacts associated with
6 the Project, failed to prepare and circulate required environmental analysis, failed to consider feasible
7 alternatives and mitigation, and illegally segmented project review.

8 3. Among other things, Petitioner seeks alternative and peremptory writs of mandate declaring
9 the City’s approvals invalid, and enjoining the City from taking steps to implement the approvals.

10 **PARTIES**

11 4. Petitioner Livable San Diego is an unincorporated association focused on environmental
12 protection and quality of life in the City of San Diego. Petitioner and its members have been injured as
13 a result of Respondent’s actions. Petitioner and Petitioner’s members use, enjoy and benefit from the
14 resources affected by Respondent’s actions. Respondent’s actions adversely affect the recreational,
15 aesthetic, environmental and economic interests of Petitioner. The interests of Petitioner have been and
16 will continue to be adversely affected by Respondent’s unlawful actions in violation of CEQA. The relief
17 sought in this Petition would redress Petitioner’s injuries.

18 5. Respondent City of San Diego is a political subdivision of the State of California and a body
19 corporate and politic exercising local government powers, as specified by the Constitution and the laws of
20 the State of California.

21 6. Petitioner does not know the true names or capacities of the persons or entities sued herein as
22 Does 1 through 5, and therefore sues these respondents by such fictitious names. Petitioner will amend
23 the Petition to set forth the names and capacities of said respondents along with appropriate charging
24 allegations when the same have been ascertained.

25 7. Real Party in Interest City of San Diego Planning Department is the Project applicant and
26 recipient of Project approval.

27 8. Petitioner does not know the true names or capacities of the persons or entities sued herein as
28 Does 6 through 10, and therefore sues these real parties in interest by such fictitious names. Petitioner will

1 amend the Petition to set forth the names and capacities of said real parties in interest along with
2 appropriate charging allegations when the same have been ascertained.

3 PROJECT DESCRIPTION AND HISTORY

4 9. The City of San Diego Planning Department proposed at least 84 amendments to the City's
5 Land Development Code, covering a broad array of areas.

6 10. A January 31, 2023 notice of a City Council meeting to consider the Project broadly
7 discussed the proposed amendments in five categories: "regulatory reforms, compliance with state law,
8 corrections, clarifications and amendments to align the code with the City's climate, equity and
9 housing goals."

10 11. Among the many amendments was a proposal to replace the definition of a Transit Priority
11 Area ("TPA") in Municipal Code Section 113.0103 with a new metric, defined as a Sustainable
12 Development Area ("SDA").

13 12. A January 25, 2023 staff report to the City Council stated: "The existing definition of a
14 TPA, which is rooted in state law, is a high level definition that measures the areas located near transit
15 by measuring a 0.5-mile straight line distance, rather than walking distance." It claimed: "To define a
16 new SDA, City staff identified areas that have good walk, roll, bike and other micro-mobility access to
17 transit." The changes defined the walking distance as either 0.75 miles or 1.0 mile. They also provided
18 that all of a specific plan area would be within an SDA if any portion of the SDA "is within a portion
19 of the adopted specific plan."

20 13. The staff report claimed that using the new SDA definition would "ensure that the City's
21 home development incentive programs focus development in areas [that] have convenient access to
22 high quality transit and safe and enjoyable walking, rolling and biking options for moving around."
23 These "incentive programs" include the recently-adopted Complete Communities Housing Solutions
24 Program and Accessory Dwelling Unit ("ADU") Home Density Bonus Program.

25 14. The staff report asserted City staff had completed a city-wide "parcel level analysis" and
26 determined the SDA would provide:

- 27 a. approximately 5,224 more developable acres than the TPA;
- 28 b. approximately 3,342 more developable acres in High and Highest Opportunity Areas;

- 1 c. approximately 688 more developable acres eligible for the Complete Communities
2 Housing Solutions Program; and
3 d. approximately 4,612 more developable acres eligible for the ADU Home Density Bonus
4 Program.

5 15. A February 2, 2023 memorandum from city staff (“15162 Memo”) claimed potential impacts
6 associated with the Project were addressed by prior environmental analyses and no new analysis was
7 necessary. Regarding the replacement of the TPA with the SDA definition, the 15162 Memo claimed
8 these issues were addressed in the 2020 Complete Communities Program Environmental Impact Report.
9 The 15162 Memo acknowledged the 2020 Complete Communities PEIR “used the ... definition of a
10 TPA” and noted the “SDA definition expands land areas beyond the TPA definition.”

11 16. Petitioner submitted a letter to the City Council in advance of its February 14, 2023 meeting
12 in which Petitioner raised several concerns regarding the proposed Measure and the lack of compliance
13 with CEQA. Among other things, it noted the “proposed update would increase developable acreage by
14 more than 25 percent of what was analyzed in the Complete Communities PEIR, yet there is no additional
15 analysis provided by the City.” It also observed that “a further change to the SDA definition allows an
16 entire specific plan to be considered as part of an SDA even if the SDA is only within a small ‘portion of
17 the adopted specific plan.’” And it noted that the staff report itself acknowledged the SDA would
18 include approximately 4,612 more developable acres eligible for the ADU Home Density Bonus Program,
19 yet no analysis was provided, either in the Complete Communities PEIR or elsewhere, discussing this
20 large change.

21 17. Responding to the City’s assertion that the Complete Communities PEIR had discussed the
22 possibility of changes to the TPA, Petitioner’s comment letter noted the prior analysis “never indicated
23 that the use of TPAs would be abandoned entirely and an entirely new approach to calculating for
24 incentivizing development would be adopted.” The letter correctly stated that courts have held: “If the
25 subsequent project is not consistent with the program or plan, it is treated as a new project and must be
26 fully analyzed in a project – or another tiered EIR if it may have a significant effect on the environment.”
27 It noted that prior environmental analysis did not mention anything about a possible change in how
28 proximity to transit is considered. Petitioner’s letter requested the City Council “reject the proposed

1 update and adoption of the SDA definition, and require further environmental analysis before
2 proceeding.”

3 18. At its February 14, 2023 meeting, the City Council heard from several speakers in
4 opposition to the Project. Among other things, commenters noted the proposal: failed to adhere to
5 widely-adopted transit-oriented development standards, included unrealistic expectations about transit,
6 omitted a comprehensive analysis of development potential, included revisions introduced at the last
7 minute without adequate consideration or analysis, and ignored inconsistency with existing Municipal
8 Code provisions. Commenters also noted the proposal would result in impacts to biological resources
9 and parks, increased traffic, increased fire risk, and increased impacts to air quality and greenhouse gas
10 emissions. Commenters also noted cumulative impacts, particularly in light of other recent City actions
11 to increase development.

12 19. Despite these and other concerns, the City Council voted to approve the Project and did not
13 require any additional environmental review.

14 20. A further City Council meeting was held on February 28, 2023 to discuss the Project.
15 Again, commenters noted numerous concerns about the Project and its impacts. And again, the City
16 Council voted to approve the Project and did not require any additional environmental review.

17 21. A Notice of Determination was filed by the City on March 10, 2023.

18 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**
19 **AND INADEQUATE REMEDIES AT LAW**

20 22. Petitioner has exhausted all available administrative remedies, and objections to the Project
21 have been presented orally and in writing to the City, as required by Public Resources Code Section
22 21177. These include, but are not limited to, letters and oral comments presented during public
23 hearings.

24 23. Petitioner has complied with the requirements of Public Resources Code Section 21167.5
25 by mailing a written notice of commencement of this action to the City. A true and correct copy of
26 that notice is attached hereto as Exhibit 1.

1 **THIRD CAUSE OF ACTION**
2 **(FAILURE TO PREPARE ENVIRONMENTAL ANALYSIS AS REQUIRED BY CEQA)**

3 32. Petitioner incorporates by reference each of the allegations set forth in this Complaint as if set
4 forth herein in full.

5 33. The City failed to prepare further environmental analysis consistent with Public Resources
6 Code Sections 21093, 21094, and 21166 and CEQA Guidelines Section 15168.

7 34. The Project is substantially different from, and includes several impacts not addressed by,
8 prior environmental analysis adopted by the City.

9 35. Substantial changes have occurred with respect to the circumstances under which the Project
10 is being undertaken which will require major revisions in the analysis.

11 36. There is new information of substantial importance that requires a new EIR.

12 37. The City illegally segmented the Project, piecemealing or otherwise avoiding reasonably
13 foreseeable impacts, and separately focusing on isolated parts of the whole.

14 38. The City failed to adopt feasible alternatives, including but not limited to, alternatives
15 requiring less impacts that meet some or all of the Project objectives.

16 39. The City failed to adopt feasible mitigation measures, failed to mitigate for each environmental
17 effect, illegally deferred mitigation, and failed to provide for effective and enforceable mitigation.

18 40. The Project is not the same as or within the scope of projects discussed in prior environmental
19 analysis adopted by the City.

20 **FOURTH CAUSE OF ACTION**
21 **(FAILURE TO PREPARE AN ENVIRONMENTAL IMPACT REPORT AS REQUIRED BY**
22 **CEQA)**

23 41. Petitioner incorporates by reference each of the allegations set forth in this Complaint as if set
24 forth herein in full.

25 42. The City failed to prepare an Environmental Impact Report to address the significant
26 environmental impacts of the Project, as required by CEQA. Environmental impacts of the Project will
27 include, but are not limited to impacts to air quality, noise, geologic resources, historical resources,
28 aesthetics, land use, global warming, shading/shadows, traffic, parking, public facilities, human health and
safety, fire, and cumulative impacts.

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

2 DATED: December 19, 2019

Respectfully Submitted,

3 **DELANO & DELANO**

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5 By: 

6 Everett L. DeLano III
7 Attorneys for Petitioner

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VERIFICATION

I have read the foregoing Verified Petition for Writ of Mandate; Complaint for Declaratory and Injunctive Relief and know its contents.

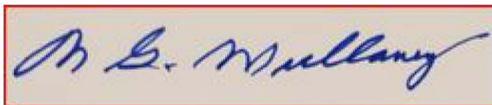
.. I am a party to this action. The matters stated in it are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

X I am an officer of Livable San Diego, a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. I have read the foregoing document(s). I am informed and believe and on that ground allege that the matters stated in it are true.

.. I am one of the attorneys for _____, a party to this action. Such party is absent from the City San Diego, California, where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason. I have read the foregoing document(s). I am informed and believe that on that ground allege that the matters stated in it are true.

Executed on April 7, 2023 at San Diego, California.

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



Thomas G. Mullaney

EXHIBIT 1



DELANO & DELANO

April 7, 2023

City Clerk
City of San Diego
202 C Street, 2nd Floor
San Diego, CA 92101

Re: Notice of Intention to Commence Action Under the California Environmental Quality Act

Dear City Clerk:

Please take notice that Livable San Diego intends to commence an action in California Superior Court, alleging, among other things, violations of the California Environmental Quality Act ("CEQA") against the City of San Diego to challenge the approvals of the Land Development Code Update 2022 ("Project"). Among other things, the petition will seek to vacate the approvals of the Project, and to enjoin the City from taking any further steps to implement the approvals.

If the City would like to discuss these concerns and their possible resolution, please contact the undersigned immediately. Thank you for your attention to this matter.

Sincerely,

Everett DeLano

EXHIBIT 2

1 Everett L. DeLano, III (Calif. Bar No. 162608)
Isabela Rodriguez (Calif. Bar No. 336015)
2 **DELANO & DELANO**
104 W. Grand Avenue, Suite A
3 Escondido, California 92025
(760) 741-1200
4 (760) 510-1212 (fax)

5 Attorneys for Petitioner

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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF SAN DIEGO, CENTRAL DIVISION**
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12 LIVABLE SAN DIEGO, an unincorporated)
association,)

13 Petitioner,)

14 vs.)

15 CITY OF SAN DIEGO, a public body corporate)
and politic, and DOES 1 through 5, inclusive,)

16 Respondents,)

17)
18 CITY OF SAN DIEGO PLANNING)
DEPARTMENT, and DOES 6 through 10,)
19 inclusive,)

20 Real Parties in Interest.)
21

Case No.

**NOTICE OF ELECTION TO PREPARE
RECORD**

(California Environmental Quality Act)

22 By this notice, Petitioner gives notice that Petitioner elects to prepare the administrative record in
23 the above-entitled action.

24 DATED: April 7, 2023

Respectfully Submitted,

DELANO & DELANO

25
26
27 By: 
Everett L. DeLano III
Attorneys for Petitioner
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EXHIBIT 3

1 **PROOF OF SERVICE**

2 *Livable San Diego v. City of San Diego*

3 I, the undersigned, declare:

- 4 1. I am over the age of 18 years and not a party to this action. I am employed in the County of San
- 5 Diego, California, in which county the within mentioned service occurred. My business address
- 6 is 104 W. Grand Avenue, Suite A, Escondido CA 92025.
- 7 2. I am familiar with this office's normal business practice for collection and processing of
- 8 correspondence for mailing with the U.S. Postal Service. That practice is to deposit
- 9 correspondence with the U.S. Postal Service the same day as the day of collection in the ordinary
- 10 course of business.
- 11 3. On April 7, 2023, I served a copy of: **VERIFIED PETITION FOR WRIT OF MANDATE;**
- 12 **COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF** to the following by the
- 13 following means:

14 California Attorney General
 15 Service Deputy
 16 600 West Broadway, Suite 1800
 17 San Diego, CA 92101-3702

18 *Email to CEQA@doj.ca.gov*

19 I declare under penalty of perjury that the foregoing is true and correct.

20 Dated this Friday, April 07, 2023 at Escondido, California,

21 

22 Isabela Rodriguez