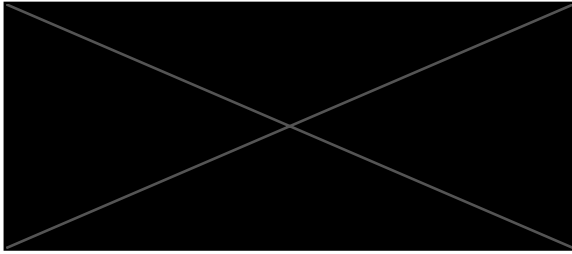


Andrea Hetheru



Petitioner and Plaintiff, in Pro Per

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO — CENTRAL DIVISION**

Hall of Justice, 330 W. Broadway, San Diego, CA 92101

ANDREA HETHERU,
Petitioner and Plaintiff,

v.

CITY OF SAN DIEGO;
SAN DIEGO CITY COUNCIL,
Respondents and Defendants.

D.R. HORTON LOS ANGELES HOLDING
COMPANY, INC.;
VERTICAL BRIDGE LANDCO, LLC,
Real Parties in Interest.

Case No.: 26CU050239C

UNLIMITED CIVIL CASE

**VERIFIED PETITION FOR WRIT OF
ADMINISTRATIVE MANDATE AND
COMPLAINT FOR DECLARATORY
RELIEF**

Failure to Proceed According to Law;

Denial of a Fair Hearing;

Inadequate or Unsupported Findings;

Ultra Vires Application of Footnote 7;

Ultra Vires Density Bonus Waivers and

Resulting HAA Error;

California Equal Protection Violation

Judge: _____

Department: _____

I. NATURE OF THE ACTION

1. Petitioner and Plaintiff Andrea Hetheru ("Petitioner"), appearing in propria persona and in her individual capacity, seeks judicial review of the City of San Diego's final July 7, 2026 approval of the Emerald Hills subdivision, Project No. PRJ-1107880, at 5702 Old Memory Lane, San Diego, California ("Project" or "Site").
2. The challenged decisions are Resolution No. R-316869 (R-2027-10), approving Site Development Permit No. PMT-3262906, Neighborhood Development Permit No. PMT-3273605, and Neighborhood Use Permit No. PMT-3286476, and Resolution No. R-316870 (R-2027-11), approving Vesting Tentative Map No. PMT-3262907. Petitioner seeks a final judgment setting aside those decisions and a writ directing lawful reconsideration.
3. The Project authorizes 123 principal homes on approximately 31.18 acres known locally as Radio Towers Hill. As alleged below, the subdivision also creates potential additional ADU and JADU capacity: if all 123 residential lots qualified for the maximum four accessory units described in the City's August 2025 guidance, the resulting conditional capacity would be 615 dwelling units, although the challenged approvals themselves authorize 123 principal homes. This action challenges the City's manner of proceeding, the fairness of the appeal hearing, the adequacy of the findings supporting the five development-standard waivers, the ultra vires application of former Footnote 7 to Table 131-04D, Development Regulations for RS Zones, in San Diego Municipal Code section 131.0431 ("Footnote 7"), the legal basis for the Density Bonus Law waivers and resulting Housing Accountability Act treatment, and the geographically selective application of Footnote 7 under the California Constitution.
4. Petitioner seeks administrative-mandate relief setting aside the challenged approvals, declaratory relief resolving the existing controversy, and allowable costs and attorney fees. The substantive relief sought is lawful reconsideration of the Project and protection of the rights alleged in this pleading. Petitioner seeks no monetary damages.
5. This action is related to Kenneth Roland Key Jr. v. City of San Diego, San Diego Superior Court Case No. 26CU043755C, because the proceedings concern the same Project approvals. Petitioner brings her own statutory and constitutional claims in this action. A

1 Notice of Related Case is submitted separately pursuant to California Rules of Court, rule
2 3.300.

3 **II. PARTIES, STANDING, JURISDICTION, AND EXHAUSTION**

- 4 6. The Site and Petitioner's residence are within the Encanto Neighborhoods Community Plan
5 Area (the "Encanto Neighborhoods Plan Area"), which is served by the Chollas Valley
6 Community Planning Group (CVC PG). At all times relevant to the events alleged in this
7 pleading, including the 2019-2020 adoption process for Footnote 7, its amendment through
8 the 2021 Code Update enacted in 2022, and the 2026 Project proceedings, Petitioner was a
9 homeowner and resident near the intersection of Euclid and Imperial Avenues,
10 approximately one mile from the Site within the Encanto Plan Area. She frequently uses
11 streets near the Site to travel to Lemon Grove and very nearby San Diego locations.
- 12 7. Petitioner alleges that the approved subdivision and grading will increase traffic on streets
13 she regularly uses and add demand to public and private resources and services within an
14 already resource-constrained Community Plan Area. The potential additional accessory-unit
15 capacity described above further bears on the possible intensity of that demand. Petitioner's
16 resource-to-density analysis, presented to Council on July 7, 2026, ranked District 4 as
17 having the lowest normalized resource-to-density ratio among the City's nine Council
18 districts, at 0.027, compared with a nine-district median of 1.502. A subsequent application
19 of the same methodology at the Community Plan Area level places the Encanto Plan Area at
20 0.062, eighth lowest among 55 City Community Plan Areas, compared with a planning-area
21 median of 3.334. Petitioner resides and owns property within, travels throughout, and
22 regularly relies upon the resources and facilities of the Encanto Plan Area. She alleges that
23 additional residential intensity without corresponding growth in resource capacity will
24 increase demand upon the Plan Area's single supermarket, fuel stations, other retail and
25 food establishments, transportation facilities, active and passive recreational spaces, health-
26 related resources, public facilities, and streets that she regularly uses, thereby affecting her
27 access to daily needs and recreation, recurring travel, residential surroundings, and use and
28 enjoyment of her home and, on information and belief, threatening diminution in its market

1 value. Development of acreage identified for potential community-park acquisition will also
2 foreclose that contingent opportunity and the local and property-value benefits it could
3 provide. The City's June 22, 2026 Staff Report to Council acknowledged that residential
4 development of the Site would remove it as a potential park and increase the parkland
5 deficiency at community build-out identified in the Community Plan; the report further
6 stated that the Community Plan had not been updated to remove the Site as a potential park
7 and that there had been no mitigation related to that loss. These alleged injuries arise from
8 Petitioner's residence, property ownership, recurring travel, and regular use of the affected
9 Community Plan Area, rather than solely from a generalized interest in lawful government.

- 10 8. Respondent and Defendant CITY OF SAN DIEGO ("City") is a California charter city
11 located in San Diego County. Respondent and Defendant SAN DIEGO CITY COUNCIL
12 ("Council") is the City's legislative body and rendered the final quasi-judicial decisions
13 challenged here. They are referred to collectively as "Respondents."
- 14 9. Real Party in Interest D.R. HORTON LOS ANGELES HOLDING COMPANY, INC., a
15 California corporation, is the Project permittee identified in the adopted permits. Real Party
16 in Interest VERTICAL BRIDGE LANDCO, LLC, a Delaware limited liability company, is
17 the identified owner. They are joined because the requested judgment affects their Project
18 approvals.
- 19 10. This Court has jurisdiction under article VI, section 10 of the California Constitution and
20 Code of Civil Procedure sections 1085, 1094.5, and 1060. Venue is proper in San Diego
21 County because the Site, Respondents, and challenged decisions are located here.
- 22 11. Petitioner is beneficially interested in enforcement of the duties alleged under Code of Civil
23 Procedure section 1086 based on the concrete uses and injuries stated above. She also
24 invokes public-interest standing for enforcement of public duties through mandate. The
25 constitutional claim asserts Petitioner's own alleged injuries and does not rest solely on a
26 generalized desire for lawful government.
- 27 12. The relief sought would also protect participation by other affected residents and interested
28 parties in the Project decision, including access to material technical submissions and a

1 meaningful opportunity to prepare and respond. Petitioner seeks enforcement of the
2 governing land-use requirements and constitutional protections in the City's decision
3 concerning this Site. Those requested protections extend to affected members of the
4 community beyond Petitioner's individual property interest.

- 5 13. CVCPG appealed the Planning Commission's November 20, 2025 approval on December 1,
6 2025. Petitioner submitted written objections, exhibits, and presentation materials, and
7 spoke at the July 7, 2026 hearing. Before the Council acted, Petitioner presented the
8 underlying objections alleged here concerning notice; the application of Footnote 7; the
9 Project's compliance with applicable objective development standards, including the legal
10 basis for the waivers and the City's resulting treatment of the Project under the HAA; and
11 the constitutional issues alleged in this pleading. Before the hearing, Petitioner also raised
12 with Council President Joe LaCava, the hearing's presiding officer, and other City officials
13 the unresolved appellant-presentation-time issue and whether resolution of the remaining
14 notice and presentation issues would leave legally sufficient time for preparation and
15 meaningful participation. At the hearing, the Council had before it the operative appeal
16 chronology stated by City staff, the agenda provision governing appellant presentation time,
17 the actual determination of the appellant's presentation allotment as it occurred, staff's
18 announcement concerning the newly available all-way-stop analysis, and Petitioner's oral
19 notice and fair-hearing objection and request for a continuance. Petitioner alleges that the
20 cumulative fair-hearing claim arises from these matters as the proceeding unfolded; she does
21 not allege that she personally articulated, before the proceeding concluded, every later legal
22 characterization of every constituent circumstance.
- 23 14. Petitioner requested a continuance or removal of the item from the calendar to address
24 notice and preparation defects. The Council proceeded and denied the appeal. To the extent
25 Government Code section 65009, subdivision (b), applies to the challenged decisions,
26 Petitioner alleges that the material issues of notice, appellant presentation time, preparation,
27 meaningful participation, and whether the matter should proceed to final action were raised
28 either at the public hearing or in written correspondence delivered to City officials

1 responsible for the conduct of the hearing before it occurred. Petitioner's prehearing
2 correspondence specifically asked whether the unresolved notice and appellant-presentation
3 issues would still leave legally sufficient time for preparation and meaningful participation.
4 Certain additional constituent circumstances, including the appellant's actual presentation
5 allotment following completion of staff's presentation and the practical effect of material
6 made available only at or immediately before the hearing, crystallized only as the final
7 proceeding unfolded. To the extent the Court determines that any constituent aspect of the
8 cumulative fair-hearing claim was not separately raised before final action, Petitioner
9 invokes Government Code section 65009, subdivision (b)(1)(A), to the extent applicable, for
10 matters that could not have been raised earlier through reasonable diligence. Petitioner does
11 not rely on an allegation that her prehearing correspondence to Council President LaCava
12 was distributed to every Councilmember.

- 13 15. This action challenges the final July 7, 2026 permit and map decisions. Government Code
14 sections 65009, subdivision (c)(1), and 66499.37 govern the asserted 90-day filing and
15 service period for those decisions. The earlier adoption and amendment of Footnote 7 are
16 alleged as background to the challenged application, rather than as a separate request to
17 reopen an expired direct challenge to an earlier enactment. Petitioner seeks relief from the
18 present permit and map decisions and their application of Footnote 7, not a freestanding
19 declaration concerning an earlier enactment. (*Travis v. County of Santa Cruz* (2004) 33
20 Cal.4th 757, 767-769 & fn. 4.)
- 21 16. Respondents have completed the administrative appeal and their decisions authorize the
22 Project to proceed subject to permit conditions. Petitioner has no further administrative
23 appeal or plain, speedy, and adequate remedy in the ordinary course of law for setting aside
24 the challenged decisions. Monetary damages do not furnish the relief sought.
- 25 17. An actual controversy exists concerning the validity of the approvals and the legal effect of
26 the standards and procedures Respondents applied. Petitioner seeks declarations incidental
27 to resolution of that controversy and final writ relief. She asserts no standalone claim under
28 the California Environmental Quality Act in this pleading.

- 1 18. The 90-day period for filing and service of this action challenging the July 7, 2026 final
2 Project decisions expires on Monday, October 5, 2026.

3 **III. GOVERNING LEGAL FRAMEWORK**

- 4 19. Code of Civil Procedure section 1094.5 authorizes review of a final administrative decision
5 resulting from a proceeding in which a hearing and receipt of evidence are legally required
6 and the agency exercises discretion. The Court's inquiry extends to whether Respondents
7 proceeded without or in excess of jurisdiction, whether there was a fair trial, and whether
8 there was a prejudicial abuse of discretion. Abuse of discretion is established where
9 Respondents failed to proceed in the manner required by law, the decision is not supported
10 by the findings, or the findings are not supported by the evidence.
- 11 20. Under Code of Civil Procedure section 1094.5, subdivisions (b) and (c), the Court reviews
12 the challenged findings under the applicable standard in light of the whole administrative
13 record. Findings must disclose the agency's analytical route from evidence to decision
14 sufficiently to permit meaningful review; the Court should not have to speculate about the
15 material basis for the decision. (*Topanga Assn. for a Scenic Community v. County of Los*
16 *Angeles* (1974) 11 Cal.3d 506, 514-517.)
- 17 21. Government Code section 65915, subdivision (e)(1), addresses development standards that
18 physically preclude construction of a qualifying development at the densities or with the
19 incentives or concessions permitted by the Density Bonus Law. The protected development
20 is considered as designed, including its lawful configuration and amenities. (*Bankers Hill*
21 *150 v. City of San Diego* (2022) 74 Cal.App.5th 755, pt. II.B.3 [court-filed opn., pp. 20-
22 22].)
- 23 22. Government Code section 65589.5, subdivision (j), governs consistency determinations for
24 housing development projects. For a project containing 150 or fewer housing units,
25 subdivision (j)(2)(A)(i) requires written identification and explanation of any applicable
26 provision the local agency considers inconsistent, noncompliant, or nonconforming within
27 30 days after the application is determined to be complete; subdivision (j)(2)(B) provides a
28 deemed-consistency consequence if the required documentation is not timely provided.

Petitioner's HAA claim concerns Respondents' use of these consistency rules and the Act's restricted-denial provisions after relying on the challenged Density Bonus Law waivers to treat objective departures as compliant.

23. Petitioner does not challenge the City's general legislative authority to enact zoning legislation. She challenges whether the geographically specific development-regulation change embodied in Footnote 7 was enacted and later amended in the manner required by the City's own zoning and rezoning provisions, and whether that mechanism was therefore lawfully available for application to this Project.
24. San Diego Municipal Code Chapter 12, Article 3, Division 1 governs zoning and rezoning. Section 123.0102 requires an application for a proposal to change a property's zone; section 123.0103 permits initiation by City Council or Planning Commission resolution or by a property owner's application; and section 123.0105 requires Process Five for a zoning or rezoning decision. Petitioner contends that Footnote 7 operated as an effective rezoning by substituting RS-1-7 subdivision regulations for RS-1-2 regulations while retaining the RS-1-2 designation. She alleges that the City did not follow the rezoning procedures and associated notice required for that substantive change. The 2019 omnibus update was itself identified as Process Five. Under the Process Five notice provisions, the Planning Commission and City Council hearings were required to be noticed in accordance with SDMC sections 112.0301(c), 112.0302, and 112.0303, including mailing to the persons and entities entitled to notice under section 112.0302(b). Section 112.0305, Notice for Land Use Plans or Zoning Ordinances, additionally required the Notice of Public Hearing to provide a general explanation of the matter to be considered and a general description of the location of the affected real property. Petitioner therefore challenges both whether the required notice was distributed to the persons and entities entitled to it and whether the notice and presentation reasonably communicated the geographically specific substantive change, rather than merely announcing a broad code update.
25. Article I, section 7, subdivision (a) of the California Constitution provides that a person may not be denied equal protection of the laws. For a facially neutral measure, a racial equal-

1 protection claim under article I, section 7 requires intentional or purposeful discrimination;
2 disparate impact alone is insufficient. California courts apply this requirement consistently
3 with federal equal-protection authorities and consider circumstantial evidence including
4 historical background, the sequence of events, procedural departures, comparative treatment,
5 and contemporaneous statements. (Baluyut v. Superior Court (1996) 12 Cal.4th 826, 832-
6 838; Village of Arlington Heights v. Metropolitan Housing Development Corp. (1977) 429
7 U.S. 252, 264-268; Personnel Administrator of Massachusetts v. Feeney (1979) 442 U.S.
8 256, 279.) Petitioner challenges Respondents' July 7, 2026 application of Footnote 7 to this
9 Project as geographically selective racial discrimination in violation of article I, section 7 of
10 the California Constitution. The constitutionality of that application is a disputed legal issue
11 presented for decision.

12 IV. FACTUAL ALLEGATIONS

13 A. The Project, Footnote 7, and the approval route

- 14 26. The Site is zoned RS-1-2. The 2015 Encanto Neighborhoods Community Plan designates it
15 Residential Very Low, at zero to four dwelling units per acre, and identifies approximately
16 19.8 acres for potential acquisition and development as a community park. The potential-
17 park identification is distinct from existing public ownership or an entitlement to compel
18 acquisition.
- 19 27. The approvals authorize a 130-lot subdivision consisting of 123 residential lots and seven
20 private open-space lots. Thirteen homes are restricted affordable for-sale units for
21 households at no more than 100 percent of area median income. The plans include four
22 pocket parks, public streets, stormwater facilities, and grading and infrastructure
23 improvements.
- 24 28. Ordinary RS-1-2 treatment includes a 20,000-square-foot minimum lot area. Footnote 7 to
25 Table 131-04D in San Diego Municipal Code section 131.0431 specified a 5,000-square-
26 foot minimum for RS-1-2 only in the Encanto and Southeastern San Diego Community
27 Planning Areas and provided that all development regulations of the RS-1-7 zone would
28

1 apply to subdivisions there. The City applied that mechanism to this Project while retaining
2 its RS-1-2 zoning designation.

- 3 29. The change from a 20,000-square-foot minimum lot area to 5,000 square feet permits a
4 fourfold increase in the number of minimum-area lots on an equal amount of otherwise
5 developable land before accounting for roads, slopes, open space, and other governing
6 requirements. That is 400 percent of the former lot-count capacity, or a 300-percent
7 increase. The actual approvals authorize 123 principal homes; the fourfold ratio describes
8 the change in the minimum-lot-area rule rather than an independently approved dwelling
9 count.
- 10 30. Petitioner also alleges potential additional dwelling capacity on the newly created residential
11 lots through applicable ADU and JADU rules. The August 2025 version of City Information
12 Bulletin 400 described a maximum of four ADUs and JADUs on eligible lots of 8,000
13 square feet or less, subject to its zoning, location, and other requirements. Assuming
14 eligibility for four accessory dwelling units in addition to one principal home on each of the
15 123 residential lots, the resulting capacity would be 615 dwelling units. Combining that
16 five-unit-per-lot assumption with the fourfold minimum-lot-area ratio yields twenty times a
17 principal-home-only baseline without use of Footnote 7. This is a conditional capacity
18 scenario, separate from the approved 123 principal homes; it does not establish twenty times
19 the otherwise lawful maximum, which would require accounting for accessory-unit rights in
20 the comparison baseline as well. Dwelling-unit capacity does not itself establish a number of
21 separate structures or vehicles.
- 22 31. Footnote 7 was a tiny inclusion at the bottom of a table introduced within a broad omnibus
23 package, Phase II of the 12th Land Development Code Update, addressing numerous
24 subjects. The October 17, 2019 Planning Commission Report No. PC-19-095 described 40
25 proposed amendments; the report and its attachments comprised a 160-page PDF packet.
26 The minimum-lot-size change appeared as issue item 9, described as a “clarification,” and as
27 Footnote 7 to Table 131-04D in the proposed code text. Other items concerned commercial
28 uses, cannabis facilities, parking, landscaping, and flood-hazard regulations. During review

1 of that package, the Community Planners Committee (CPC) considered the proposal on
2 October 22, 2019, two days before the October 24 Planning Commission hearing. Its
3 minutes state that draft language had been made available to its chair on October 2. CPC
4 voted 27-0 to request postponement for further review. At Planning Commission, CPC
5 Chair Wally Wulfeck requested a continuance to allow review by the individual community
6 planning groups, CPC, and the Code Monitoring Team. Code Monitoring Team Chair
7 Marcela Escobar-Eck described the process as feeling like drinking out of a fire hose and
8 called for slowing it down. The Commission proceeded to recommend approval of the
9 update with specified exceptions, without granting the requested overall postponement.

10 32. Petitioner alleges that the volume of the omnibus package, placement of the substantive
11 change in a table footnote, characterization of the change as a clarification, technical zoning
12 nomenclature, and limited opportunity for review operated together to obscure that
13 materially different subdivision rules were proposed for the named Community Plan Areas.
14 Her objection is not that a particular page count is unlawful by itself. It is that the notice and
15 presentation did not reasonably alert affected residents and property owners to the nature
16 and location of the change so that they could investigate and participate meaningfully. The
17 availability of the full packet did not by itself cure that alleged deficiency. The
18 contemporaneous requests for additional review described above bear on the practical
19 adequacy of the opportunity afforded.

20 33. The Council introduced the Phase II ordinance containing Footnote 7 on December 17,
21 2019, for adoption on January 7, 2020. Footnote 7 was enacted through Ordinance No. O-
22 21164 N.S. as part of the 12th Land Development Code Update (Phase 2). Through the 2021
23 Code Update, Footnote 7 was amended by Ordinance No. O-21416 N.S., enacted January
24 27, 2022 and effective February 26, 2022, to provide that all development regulations of the
25 RS-1-7 zone would apply to subdivisions in the Encanto Neighborhoods and Southeastern
26 San Diego Community Planning Areas. The 2021 item matrix again characterized the
27 change as a “clarification” and described it as making the development regulations for
28 5,000-square-foot lots in Encanto and Southeastern San Diego consistent with the RS-1-7

1 zone. Petitioner alleges that the original enactment and the 2021 amendment were not
2 processed and noticed as the geographically specific rezoning she contends they
3 substantively accomplished.

- 4 34. The repeal of Footnote 7 under Ordinance No. O-21934 N.S. took effect on April 24, 2025.
5 Respondents nevertheless continued applying Footnote 7 to this Project.
- 6 35. The applicant's October 19, 2023 letter of request sought a rezone from RS-1-2 to RX-1-1.
7 Applicant materials dated February 7–8, 2024 invoked Footnote 7. The City's March 25,
8 2024 assessment recorded elimination of the rezone and addition of the Neighborhood
9 Development Permit and Neighborhood Use Permit route. The applicant thus changed the
10 requested entitlement route during processing. Petitioner alleges that this sequence is
11 relevant to the City's use of Footnote 7 and to the zoning and notice procedures alleged to
12 apply to that substantive change. The sequence illustrates the substitution of the Footnote 7
13 mechanism for the conventional rezoning route initially pursued; Petitioner does not offer
14 the initial application as an independent admission that Footnote 7 was invalid.

15 **B. Hearing notice and preparation**

- 16 36. The appeal remained pending from December 1, 2025 until July 7, 2026, a period of 218
17 days. For much of that period, the appellant and participating residents lacked a reliable
18 final hearing date around which to organize. In prehearing correspondence dated June 27,
19 2026, Petitioner expressly informed Council President Joe LaCava and other City officials
20 that the appeal had been filed more than six months earlier while raising the unresolved
21 notice and appellant-presentation issues and their effect on preparation and meaningful
22 participation. At the July 7 hearing itself, Development Project Manager Martin Mendez
23 stated to Council that the Planning Commission had approved the Project on November 20,
24 2025 and that CVCPG appealed the decision on December 1, 2025. The hearing was held
25 during the Council's July 7, 2026, 2:00 p.m. session, Item 331. Thus, the commencement
26 and duration of the appeal were facts contained in the City's own proceeding and expressly
27 stated to the final decisionmaker before Council acted.
- 28

1 37. SDMC section 112.0508(e) requires that a Process Four appeal hearing before Council be
2 held no later than 60 calendar days after the appeal application is filed, subject to its
3 specified meeting-calendar exception. It separately requires that appeal hearings regarding
4 tentative maps be held no later than 30 calendar days after the appeal application is filed,
5 subject to a notice-and-meeting exception requiring the next qualifying regularly scheduled
6 meeting or a hearing within 60 calendar days, whichever is shorter. The Project appeal
7 concerned both permits and a Vesting Tentative Map. The July 7 hearing occurred 218 days
8 after the December 1 appeal. Petitioner alleges on information and belief that no exception
9 stated in section 112.0508(e) authorized that 218-day interval. When the City enacted these
10 appeal-hearing deadlines through Ordinance No. O-20863, it stated that their purpose was to
11 ensure timely appeal hearings “to facilitate resolution of the issues for all involved parties.”
12 Section 112.0508(e) further provides that failure to hold the hearing within 60 days does not
13 limit Council’s authority to consider the appeal. Petitioner therefore does not allege that
14 expiration of the prescribed period automatically divested Council of jurisdiction; she
15 alleges noncompliance with the timing requirement and relies upon the resulting delay and
16 scheduling uncertainty as both a manner-of-proceeding defect and a component of the
17 cumulative fair-hearing claim stated below. Government Code section 66451.1 authorizes
18 mutual extension of the time limits specified in Chapter 3 of the Subdivision Map Act for
19 reporting and acting on maps. By its terms, such an extension does not itself extend the
20 independently stated appeal-hearing periods enacted in SDMC section 112.0508(e).
21 California authority further recognizes that a local ordinance that supplements Map Act
22 procedures without conflicting with them does not thereby “modify” the Map Act. (*Griffis v.*
23 *County of Mono* (1985) 163 Cal.App.3d 414, 425 & fn. 14.) Petitioner alleges that
24 compliance with the City’s shorter local hearing period can coexist with the Map Act’s
25 applicable state hearing period. Accordingly, any agreement extending a state-law map-
26 processing deadline, if one existed, would not, standing alone, establish compliance with
27 section 112.0508(e); any claimed displacement, waiver, or extension of the independently
28 stated local periods would require an additional legal basis.

- 1 38. Petitioner participated in the appeal as an unpaid resident whose preparation had to be
2 accommodated alongside ordinary personal and family responsibilities. Reliable advance
3 knowledge of the hearing date was necessary to allocate preparation time, rearrange
4 competing obligations, communicate with other affected residents, coordinate participation,
5 and organize evidence and presentations. The prolonged uncertainty concerning when the
6 appeal would be heard materially impaired Petitioner's ability to undertake and coordinate
7 those activities.
- 8 39. That uncertainty imposed a materially greater practical burden on Petitioner and other
9 participating residents than on the applicant. Preparation and advocacy concerning the
10 Project fell within City staff's assigned governmental work and the applicant's development
11 business. City staff supported approval and prepared the presentation recommending that
12 Council deny the appeal. The applicant benefited from institutional preparation and
13 advocacy supporting its requested approval, while Petitioner and other residents had to
14 arrange their participation around responsibilities outside the development-review process.
- 15 40. The 218-day pendency of the appeal did not provide Petitioner with an equivalent period of
16 usable, coordinated preparation. Prolonged scheduling uncertainty impaired advance
17 organization, while the subsequent notice deficiencies, late availability of technical material,
18 and uncertainty concerning the appellant's actual presentation allotment further constrained
19 preparation as the hearing approached. Together, these circumstances materially impaired
20 Petitioner's opportunity to investigate, organize, present her objections, and respond to the
21 case for approval before Council acted.
- 22 41. Formal notice of the July 7, 2026 appeal hearing was issued on June 22, 2026. The City also
23 posted the notice on the City Council's website. Petitioner had supplied her physical mailing
24 address at City staff's request and appeared on the interested-parties list, but she did not
25 receive mailed notice of the July 7 hearing. Posting notice on a City website did not satisfy
26 the separate mailed-notice requirements applicable to persons entitled to notice under
27 SDMC sections 112.0301(c), 112.0302, and 112.0308. Section 112.0302(c) permits
28 publication in lieu of otherwise required mailing only where the number of tenants and

1 owners to whom notice would be mailed exceeds 1,000; Petitioner alleges that this
2 exception did not apply to this Project. Before the hearing, Petitioner and the appellant
3 questioned whether the required mailing had occurred and requested the underlying notice
4 records. On June 29, 2026, the appellant informed City officials that, after asking several
5 neighbors living near the Project site, she had been unable to identify residents who had
6 received the mailed hearing notice.

- 7 42. The City's notice records include a Certificate of Mailing executed under penalty of perjury
8 by Deputy City Clerk Monique Ross on June 22, 2026, stating that 209 notices were
9 deposited in the United States mail with postage prepaid, and a City Daily Metered Mail
10 Record reflecting 209 first-class pieces for the Emerald Hills appeal that day. On July 6,
11 2026, City Clerk Diana Fuentes provided Petitioner with the owner/occupant and interested-
12 party lists described as the mailing lists provided to the Clerk's office for distribution;
13 Petitioner's correct mailing address appears on the interested-parties list. Petitioner does not
14 allege that her own nonreceipt, standing alone, establishes that the City failed to mail the
15 notice, or that reports of nonreceipt by other residents, standing alone, establish a defect in
16 the City's mailing process. She alleges, however, that she did not receive the mailed notice
17 and that her retained USPS Informed Delivery records contain no indication of it, and that
18 before the hearing the appellant reported that multiple owners or occupants within the 300-
19 foot notice radius whom she contacted likewise had not received mailed notice. The
20 presumption of receipt arising from proof of mailing under Evidence Code section 641 is
21 rebuttable, and evidence sufficient to support a finding of nonreceipt causes that
22 presumption to cease operating as to the presumed fact of receipt, while the underlying
23 evidence of mailing remains for the trier of fact to weigh. (Evid. Code, §§ 604, 641; *Craig v.*
24 *Brown & Root, Inc.* (2000) 84 Cal.App.4th 416, 421–422.) The significance of the
25 additional reports of nonreceipt is therefore pleaded conditionally. If competent evidence
26 establishes a substantial and corroborated pattern among persons whom the City's own
27 records identify as recipients and, considered together with the City's mailing records or
28 other evidence, supports a finding that required notices were not actually mailed as

1 represented or otherwise materially undermines the reliability of the City's proof of
2 compliant mailing, Petitioner alleges that such a founded broader or systemic mailing defect
3 would be relevant both to compliance with the mailed-notice requirements and to the
4 opportunity for affected persons to participate. If no such broader mailing defect is
5 established, Petitioner does not rely on isolated nonreceipt of otherwise properly mailed
6 notice as a notice violation or component of the cumulative fair-hearing claim. At the July 7
7 hearing, Petitioner expressly framed the issue conditionally, stating, "These issues are not
8 harmless. If founded," and explaining that notice gives affected residents time to "see,
9 prepare, organize, submit evidence, and participate." Petitioner requested that Council
10 continue the hearing or remove the matter from the calendar until the notice record was
11 complete and legally meaningful participation had been provided. Council proceeded
12 without granting that request.

- 13 43. On June 26, 2026, in his initial response to Petitioner's inquiry concerning the absence of
14 appeal-hearing signage at the Site, Development Project Manager Martin Mendez pointed to
15 website posting and newspaper publication and stated that the notices had been "posted and
16 distributed in accordance with the requirements of Chapter IV of the Brown Act." After
17 Petitioner clarified that her inquiry concerned the separate onsite-posting requirement of
18 SDMC section 112.0304(a)(5), Mendez later that day confirmed that the appeal-hearing
19 notice had not been posted onsite and that the Applicant was "in the process of posting the
20 notices." In a July 1 response, Mendez further stated that the Applicant had been emailed a
21 copy of the appeal-hearing notice on June 26, had confirmed receipt, posted notices on June
22 29, and reposted them on June 30 after City staff identified incorrect hearing information in
23 the header. SDMC section 112.0304(a)(5) requires a new posted notice stating the appeal-
24 hearing date when a decision has been appealed, and subdivision (b) requires the applicant
25 to verify in writing that the notice was posted in accordance with the section within five
26 business days after receiving the notice from the City. Although the Code does not
27 separately prescribe when the City must transmit the appeal-hearing notice to the applicant
28 for posting, Petitioner alleges that the posting requirement must be implemented sufficiently

1 in advance of the hearing to serve its function as public notice and afford affected persons a
2 meaningful opportunity to learn of, prepare for, and participate in the hearing. The
3 applicable appeal-hearing notice provisions require mailed and published notice at least 10
4 business days before the hearing; they do not establish that period as a maximum or prohibit
5 the City from providing notice earlier once the hearing date has been established. Petitioner
6 therefore alleges that the City may not reasonably administer the separate posting
7 requirement by delaying transmission to the Applicant so long that the five-business-day
8 verification period consumes most or all of the remaining period before the hearing, which
9 could permit verification to occur only after the hearing and render the mandatory appeal-
10 hearing posting ineffective as advance notice. Here, the City issued the formal July 7
11 hearing notice on June 22 but did not provide the appeal-hearing notice to the Applicant for
12 posting until June 26; the Applicant's June 29 posting contained incorrect hearing
13 information, and correct appeal-hearing signage was not posted until June 30, only seven
14 days before the hearing. On June 29, Petitioner recorded date- and time-supported video and
15 photographs documenting the absence of the required appeal-hearing signage in the areas
16 observed, and the appellant independently informed City officials that she had just driven by
17 the Site and observed no appeal signs. Petitioner further observed that, at the Old Memory
18 Lane cul-de-sac access near the existing Emerald Hills Neighborhood Park, prior Planning
19 Commission hearing signage had been placed near the middle of the gate and fence opening
20 directly onto the Site, where it was readily visible to persons driving through the cul-de-sac,
21 whereas the corrected appeal-hearing sign was placed at the far corner of that gate and
22 fence, partially behind brush and materially less conspicuous. Before the hearing, Petitioner
23 submitted her declaration, still photographs, source-video materials, City correspondence
24 concerning the posting, and a written notice-and-due-process statement for inclusion in the
25 administrative record. At the July 7 hearing, she expressly raised the posting defect orally,
26 identified the June 29 evidence and the City's June 30 correction, and requested a
27 continuance or removal of the item from the calendar. Petitioner alleges that the delayed and
28 initially defective posting, the materially compressed period of effective onsite notice, the

1 less conspicuous corrected placement, and the other preparation defects alleged herein,
2 considered cumulatively, impaired meaningful participation in the final hearing. To the
3 extent competent evidence establishes that the contemporaneously reported nonreceipt
4 reflected a broader defect in the required mailing process rather than isolated nonreceipt of
5 otherwise properly mailed notices, Petitioner alleges that such a founded mailing defect
6 would constitute an additional component of the cumulative deprivation. SDMC section
7 112.0304(c)'s limitation concerning posting errors or irregularities is addressed as part of
8 this cumulative fair-hearing claim.

- 9 44. At 2:00 p.m. on July 6, 2026, City Clerk Diana Fuentes emailed Petitioner the requested
10 owner/occupant and interested-party mailing-recipient lists, approximately 24 hours before
11 the scheduled 2:00 p.m. July 7 hearing. By that time, the appellant had already informed
12 City officials that, after asking several neighbors living within the 300-foot notice radius,
13 none had reported receiving mailed notice of the appeal hearing. Receipt of the lists enabled
14 Petitioner for the first time to compare those reports against the persons and addresses the
15 City identified as having been included in the mailing. Petitioner does not allege that
16 Fuentes or the City violated a disclosure deadline by providing the lists on July 6, that the
17 July 6 production was itself legally untimely, that a mailing-recipient list constitutes proof
18 of actual delivery, or that reports of nonreceipt entitled Petitioner to a continuance merely to
19 investigate whether every listed recipient actually received notice. The timing is alleged for
20 the narrower evidentiary purpose of explaining why, if competent evidence subsequently
21 supports a finding that the reported nonreceipt reflected a broader defect in the required
22 mailing process, evidence requiring comparison to the City's claimed recipient universe or
23 further investigation of the mailing process could not necessarily have been developed and
24 presented before Council acted the following day. Petitioner requested that Council continue
25 the hearing or take the matter off calendar until the notice record was complete and legally
26 meaningful participation had been provided, but she does not allege that the July 6
27 production of the recipient lists, standing alone, legally required Council to grant that
28 request.

- 1 45. To the extent Petitioner presents competent and relevant evidence that, considered together
2 with the City's notice records, supports a finding that required mailed notices were not
3 actually mailed as represented, that the City's proof did not accurately reflect compliant
4 mailing to required recipients, or that a broader defect existed in the mailing process, and
5 the Court finds that such evidence could not, in the exercise of reasonable diligence, have
6 been developed and presented at the July 7 hearing under the circumstances alleged in
7 paragraph 44, Petitioner seeks the relief authorized by Code of Civil Procedure section
8 1094.5(e), including remand for reconsideration in light of that evidence. Petitioner does not
9 invoke section 1094.5(e) merely to investigate whether persons failed to receive notices that
10 were otherwise properly mailed, and she does not contend that the July 6 production of the
11 recipient lists itself constituted a violation.
- 12 46. The appellant's separate presentation time was initially unresolved. On June 26, 2026,
13 Gonzales Walding, chair of and acting for CVCPG, reported to Petitioner that she had
14 spoken with Martin Mendez and another participant and understood that the appellant had
15 no special presentation preference. A separate contemporaneous email from Marry Young,
16 who served as vice chair for CVCPG, reported her understanding that Gonzales Walding
17 had been told she would receive only one minute.
- 18 47. On June 26, Petitioner intervened by explaining via email that appellant presentation time
19 was separate from the time available to a planning group or pooled public commenters. At
20 3:39 p.m., she forwarded the issue to multiple City officials and requested a direct
21 confirmation. Daniel Horton, Chief of Staff for District Four Councilmember Henry Foster,
22 referred the inquiry to Kevin Smith of the City Clerk's office that evening. On June 27,
23 Petitioner sent a supplemental inquiry to Council President Joe LaCava, Councilmember
24 Foster, Mendez, Fuentes, and other City officials asking whether CVCPG would receive
25 separate appellant presentation time, how much time it would receive, whether pooled
26 public-comment time remained separately available, whether any advance-submission
27 requirement applied, and whether resolving those matters at that point would still provide
28 legally sufficient time for notice, preparation, and meaningful participation before the July 7

1 hearing. As Council President, LaCava was the Council's presiding officer; the Rules of
2 Council charge the Council President with chairing Council meetings and enforcing the
3 Rules of Council. Petitioner alleges that the preparation-time concern was therefore raised
4 before the hearing with the City official who would preside over the proceeding, although
5 she does not allege that the June 27 correspondence was distributed to every
6 Councilmember.

7 48. On June 29 at 12:35 p.m., Kevin Smith confirmed by email that the applicant and appellant
8 would each receive time after staff's presentation and before general public comment. He
9 tied that time to the length of staff's presentation and stated that presentations were typically
10 expected to be under ten minutes. This confirmation came eight calendar days before the
11 hearing.

12 49. At 1:08 p.m. on June 29, Petitioner forwarded Smith's email to Gonzales Walding and
13 characterized it as confirmation of ten minutes separate from pooled public-comment time.
14 At 5:47 p.m., Gonzales Walding acknowledged Smith's explanation that the appellant and
15 applicant would each receive the time taken by staff. The correspondence thus reflects both
16 an anticipated ten-minute presentation and an allocation whose actual length depended on
17 staff.

18 50. The July 7 agenda stated a default of up to ten minutes for the applicant or appellant and
19 permitted extension when the City's presentation exceeded ten minutes. Petitioner called
20 Gonzales Walding's attention to that provision in a July 2 email. Although Gonzales
21 Walding knew the equal-time rule before July 7, the rule did not disclose the actual time for
22 which she could prepare. Because staff's eventual presentation length controlled her
23 allotment, she had to prepare a presentation capable of fitting within ten minutes.

24 51. City staff controlled the content and scope of its own prepared presentation, which
25 recommended denial of the appeal and approval of the Project and defended the Project
26 against the appeal. After staff completed its presentation at the July 7 hearing, Council
27 President LaCava called the appellant forward and asked how much time she needed for her
28 presentation. Gonzales Walding responded, "Do I get 35 minutes?" LaCava answered, "If

1 you need 35 minutes, that's what they took, yes." Gonzales Walding stated that she did not
2 need the full amount and requested approximately 15 minutes. The exchange established in
3 the hearing itself that the appellant's actual available allotment was determined only after
4 staff's presentation had concluded. Because staff advocated the same disposition sought by
5 the Applicant, its presentation functionally added advocacy time to the position favoring
6 approval before the Applicant's separate presentation began. Thus, although the City's
7 policy purported to provide equal presentation time to the Applicant and appellant, it did not
8 provide equivalent presentation time to the competing positions before Council: the position
9 favoring denial of the appeal and approval of the Project received both the City staff
10 presentation and the Applicant's separate presentation, while the position supporting the
11 appeal received only the appellant's presentation. Moreover, because the appellant's allotted
12 time depended on the eventual length of staff's presentation, Gonzales Walding could not
13 know in advance how much time she would actually receive and therefore had to prepare a
14 presentation capable of fitting within ten minutes. Preparing a ten-minute presentation
15 required different selection, organization, depth, and rehearsal than preparing with advance
16 assurance of 35 minutes. Petitioner alleges that these circumstances created both a practical
17 disparity in advance preparation and a functional disparity in the presentation time afforded
18 to the competing positions.

- 19 52. At the opening of Item 331, staff member Martin Mendez stated that staff had received,
20 before the hearing, an applicant-prepared all-way-stop traffic analysis concerning the
21 proposed intersection at 60th Street; that it had been distributed to Councilmembers; and
22 that copies were available to the general public. Staff described the analysis as a voluntary
23 submission responding to a Planning Commission comment.
- 24 53. The all-way-stop analysis was not included in the advance online agenda materials reviewed
25 by Petitioner. Petitioner alleges on information and belief, based on those materials and
26 staff's opening announcement, that the public access offered for the July 7 consideration
27 consisted of copies at the hearing, without a meaningful advance opportunity to obtain and
28

1 analyze the report. This timing prevented incorporation of a considered technical response
2 into Petitioner's prepared presentation.

- 3 54. Petitioner alleges that the procedural circumstances alleged in paragraphs 36–43 and 46–53,
4 considered cumulatively, rendered the hearing unfair to Petitioner and materially impaired
5 meaningful participation by other affected residents and interested persons. This cumulative
6 fair-hearing claim does not depend on treating the July 6 production of the mailing-recipient
7 lists as a procedural violation or on ultimately establishing a broader defect in the City's
8 mailed-notice process. If competent evidence satisfying paragraph 45 establishes such a
9 mailing defect, Petitioner alleges that the founded defect would constitute an additional
10 component of the cumulative deprivation. If no such defect is established, the fair-hearing
11 claim remains based on the other circumstances alleged, including the prolonged appeal
12 period and scheduling uncertainty, the appeal-stage onsite-notice sequence, the preparation
13 consequences of the appellant presentation procedure, the late availability of material
14 technical information, and the related opportunity to prepare and respond before final action.
- 15 55. Recital H of Resolution No. R-316869 characterizes the Council as a quasi-judicial body
16 and identifies the duty to consider evidence and make legal findings. That recital bears on
17 the nature of the proceeding and the fair-hearing obligations alleged here. The statutory fair-
18 hearing inquiry includes a meaningful opportunity to meet material evidence relied upon in
19 the adjudication. (Code Civ. Proc., § 1094.5(b); *English v. City of Long Beach* (1950) 35
20 Cal.2d 155, 158-159.) Petitioner challenges the opportunity to examine and answer the
21 material evidentiary basis for approval.

22
23 **C. Density Bonus Law waiver findings and the final decision**

- 24 56. Respondents approved five waivers under the Density Bonus Law concerning street
25 frontage, ordinary lot width, corner-lot width, lot depth, and driveway curb-opening limits.
26 Government Code section 65915(e)(1) authorizes waiver or reduction of a development
27 standard that would have the effect of physically precluding construction of the qualifying
28 development at the densities or with the incentives or concessions permitted by the statute.

1 The inquiry concerns the Project as designed, including its lawful configuration and
2 amenities. Respondents separately approved one incentive concerning street-side property-
3 line fence height. The permit resolution's tables identify the ordinary standards and
4 numerical departures.

5 57. The adopted tables identify frontage of 37 to 49 feet against a 50-foot standard; ordinary lot
6 width of 45 to 49 feet against a 50-foot standard; corner-lot width of 48 to 54 feet against a
7 55-foot standard; depth of 93 feet for Lots 110 and 111 against a 95-foot standard; and
8 driveway curb openings exceeding the stated 40-percent frontage limitation for more than
9 100 lots.

10 58. The Development Services Department's June 22, 2026 Staff Report to City Council
11 addressed the appeal and incorporated the revised Planning Commission Report No. PC-25-
12 053 and Project plan sheets C1 and C2. Those materials identify the requested incentive and
13 waivers, applicable standards, proposed dimensions, and affected-lot lists. The November
14 19 correction memorandum distinguishes driveway width from driveway curb-opening
15 width: the proposal is for a 16-foot driveway with a three-foot flare on each side, producing
16 a 22-foot curb opening. C1 explains a conflict between that opening and the 40-percent
17 frontage limitation and supplies some dimensional support for the requested relief.
18 Therefore, Petitioner does not allege that the hearing materials contain no such explanation,
19 or that the driveway itself was necessarily widened from 16 to 22 feet.

20 59. However, the combined hearing materials leave material measurements and waiver coverage
21 unreconciled. C1 describes the curb-opening limitation by frontage but refers to lots less
22 than 55 feet wide, although C2 lists lot width and lot frontage separately. The curb-opening
23 waiver list includes Lots 12, 55, and 56; C2 lists their frontage as 56, 68, and 68 feet,
24 respectively, for which a 22-foot opening would be below 40 percent if those are the
25 applicable frontage measurements. C2 also lists Lot 21 as 43 feet wide, but that lot is not in
26 the ordinary lot-width waiver list. The Council staff report additionally states that the
27 requested incentive and waivers involve 248 instances on 96 lots, while its table identifies
28 107 lots for the curb-opening waiver alone; the report does not reconcile those descriptions

1 of the scope of the requested relief. Petitioner alleges inconsistencies requiring
2 reconciliation, not that every table entry necessarily establishes the correct field
3 measurement or an independently dispositive violation. The hearing materials identified
4 here do not explain which measurements and lot coverage control the waiver
5 determinations.

- 6 60. The Project materials do not treat every physical detail as immutable. The permit conditions
7 contemplate building modifications and site improvements to comply with identified
8 building and safety requirements and require substantial conformity to the approved plans
9 while allowing appropriately approved changes. The plan sheets state that proposed setbacks
10 are preliminary and may vary in final engineering. Petitioner relies on these provisions to
11 distinguish matters left for further review from the features and measurements used to
12 justify the waivers at approval. She does not allege that every minor change is outside the
13 Density Bonus Law or request that the Court substitute a preferred design.
- 14 61. The adopted explanation links the incentive and five waivers collectively to retaining 123
15 homes and the selected configuration, open space, pocket parks, and grading design. The
16 incorporated findings state that, without the requested incentive and waivers, the regulations
17 would “impact the developable area,” the Project would not be able to “maximize the
18 number of residential dwelling units,” and the waivers would “maximize the development
19 potential.” They then compare the proposed Project with “a project designed in strict
20 conformance” with the applicable regulations and state that such a project could potentially
21 lose eight to fourteen lots, alter the site layout, reduce proposed open space and pocket
22 parks, require additional grading, and potentially lose up to two affordable units. The eight-
23 to-fourteen-lot range is material because Respondents themselves relied on projected lot loss
24 as part of the causal explanation for the waivers. A fixed Project as designed and a fixed set
25 of applicable development standards do not, without further explanation, yield two different
26 lot-loss endpoints. If the eight- and fourteen-lot endpoints reflect different compliant
27 redesigns, engineering alternatives, or other assumptions, the findings do not identify those
28 alternatives or assumptions, and such alternative configurations do not themselves establish

1 the effect of applying the standards to the Project as designed. If the endpoints do not reflect
2 different alternatives or assumptions, the findings do not explain why application of the
3 same standards to the same design produces a range rather than a determinate physical
4 consequence. Petitioner does not allege that Government Code section 65915(e)(1)
5 independently requires an exact lot-loss calculation. She alleges that, once Respondents
6 relied on an asserted loss of eight to fourteen lots to justify the waivers, the unexplained
7 range—together with the findings' maximization, development-potential, and site-layout
8 reasoning and the unreconciled measurements and waiver coverage alleged above—fails to
9 disclose a sufficiently coherent analytical route establishing the physical-preclusion
10 predicate for the scope of the five waivers actually approved.

- 11 62. Councilmember Henry Foster moved approval on the staff recommendation after addressing
12 the HAA standard concerning a specific adverse impact on public health or safety. The
13 Council denied the appeal and approved the Project by an eight-to-one vote. The June 22
14 Council staff report treated the Project as complying with applicable development
15 regulations except where departures were allowed through the requested incentive and
16 waivers. Petitioner alleges that, unless the five challenged waivers were lawfully supported
17 by the physical-preclusion predicate of Government Code section 65915(e), those waivers
18 could not supply the statutory basis for treating the identified objective departures as
19 compliant under the Housing Accountability Act. Petitioner challenges the legal and
20 evidentiary foundation for the waivers and resulting HAA determinations underlying the
21 Council's action.

22
23 **D. Statements and geographic treatment relevant to the equal-protection claim**

- 24 63. During public comment, former Councilmember Monica Montgomery Steppe stated that
25 she supported the earlier code change and described large minimum lots as an exclusionary
26 barrier affecting working families and people of color. She emphasized opportunities for
27 homeownership and supported consideration of reduced minimum lots in other parts of the
28 City.

- 1 64. Councilmember Foster stated that he had served as Montgomery Steppe's chief of staff. He
2 attributed Footnote 7's origin to the prior mayoral administration and described his later
3 effort to repeal it because the process lacked transparency, consistency, and inclusion. He
4 also defended smaller lots as advancing housing opportunity and discussed citywide reform.
- 5 65. Footnote 7 was geographically limited by its express terms to the Encanto Neighborhoods
6 Community Plan Area and the Southeastern San Diego Community Plan Area, both
7 predominantly Black and Latino/non-White communities. However, Southeastern San
8 Diego Plan Area contained no parcels zoned RS-1-2. Footnote 7 therefore had no operative
9 effect there and, as a practical matter, applied only to RS-1-2 land in the Encanto Plan Area.
10 RS-1-2 parcels elsewhere in the City remained subject to the ordinary RS-1-2 minimum-lot-
11 area and development regulations and were excluded from Footnote 7's special treatment.
12 The City Planning Department later acknowledged both that the Southeastern San Diego
13 Plan Area contained no RS-1-2 parcels and that it was unclear why the amendment was not
14 applied citywide or why Southeastern San Diego Plan Area had been included. Petitioner
15 alleges that this geographically selective structure and practical effect are relevant to the
16 unequal-treatment and discriminatory-purpose allegations stated below.
- 17 66. The appellant expressly placed a comparison with lower-density Foxhill development in La
18 Jolla before the Council during her presentation. Staff responded that differences between
19 the projects were driven by the development teams, market conditions, and applicable
20 regulations. Petitioner's geographic-treatment allegation concerns the different rules for RS-
21 1-2 land inside and outside Footnote 7's named areas. The references to Foxhill identify the
22 comparison raised at the hearing; they do not establish that Foxhill had the same base zone
23 or identical development constraints.
- 24 67. The City's November 2021 Foxhill report, HO-21-055, identifies RS-1-4 zoning for the
25 property at 7007 Country Club Drive. Under SDMC section 131.0403(b)(1), RS-1-4
26 ordinarily permits a 10,000-square-foot minimum lot area, compared with 20,000 square
27 feet for RS-1-2. RS-1-4 therefore permits smaller minimum-area lots than ordinary RS-1-2,
28 yet the Footnote 7 treatment applied to Emerald Hills permitted a still smaller 5,000-square-

1 foot minimum. Petitioner alleges that this comparison illustrates the reversal of the ordinary
2 relationship between those base-zone lot-size limits. The identified Foxhill record concerns
3 a particular site and subdivision phase and does not independently establish all of the unit-
4 count and acreage figures cited during the hearing.

- 5 68. In an October 21, 2024 response to CPC, the City Planning Department stated that the
6 20,000-square-foot RS-1-2 minimum continued elsewhere in the City, while Footnote 7
7 allowed 5,000-square-foot lots in the two named areas. The letter also stated that
8 Southeastern San Diego contained no RS-1-2 parcels. It explained that the amendment
9 preceded the Department's internal procedures for reviewing code changes for consistency
10 with its climate and housing goals, including fair-housing obligations.
- 11 69. Petitioner alleges on information and belief that the City knew the racial and ethnic
12 composition of both the Encanto Plan Area and the Southeastern San Diego Community
13 Plan Area when it adopted Footnote 7. The City's planning materials documented those
14 demographics before adoption. Petitioner further alleges that Respondents possessed this
15 knowledge when approving the Project on July 7, 2026. Petitioner relies on that knowledge,
16 together with the geographic selection and procedural irregularities alleged herein, as
17 circumstantial evidence relevant to discriminatory purpose.
- 18 70. Petitioner relies on the racial composition of the two Community Plan Areas selected for the
19 application of Footnote 7, as well as the sequence of adoption and amendment, the inclusion
20 of the change as a footnote within an omnibus code update, the alleged effective rezoning
21 without compliance with the Municipal Code's rezoning procedures, the acknowledged
22 process concerns surrounding repeal, and the continuation of the mechanism for this Project
23 as circumstantial evidence relevant to discriminatory purpose. Petitioner acknowledges the
24 stated homeownership and exclusion-reduction objectives described in paragraphs 63 and
25 64, but does not offer those stated objectives as affirmative evidence of discriminatory
26 purpose. Notwithstanding those explanations, she alleges from the circumstances described
27 above that racial discrimination was a motivating factor in the challenged application of
28

Footnote 7. Councilmember Foster's separate acknowledgment of process deficiencies bears on the alleged procedural history, not an admission of racial discrimination.

FIRST CAUSE OF ACTION

FAILURE TO PROCEED ACCORDING TO LAW

Against the City and City Council; Real Parties joined as interested parties

71. Petitioner incorporates paragraphs 1 through 70.
72. Respondents were required to proceed in the manner required by law, including by applying only lawfully available zoning rules, satisfying the statutory predicates governing development-standard waivers, and complying with mandatory appeal-hearing timing and notice procedures before final approval.
73. Petitioner alleges that Respondents proceeded unlawfully by applying Footnote 7 despite the zoning and rezoning procedural defect alleged below and by treating the five waiver approvals as sufficient to resolve the identified objective departures without the legally adequate physical-preclusion predicate alleged to be missing. The specific Footnote 7 and Density Bonus Law/HAA defects are stated in the Fourth and Fifth Causes of Action.
74. Petitioner further alleges noncompliance with the appeal-hearing timing and notice requirements described above, including SDMC section 112.0508(e), the onsite-notice requirements associated with SDMC section 112.0304(a)(5), and the initially inaccurate appeal posting that was corrected on June 30. As alleged above, the appeal hearing occurred 218 days after the appeal was filed. Petitioner alleges that this did not comply with the independently stated local hearing periods in section 112.0508(e), absent a legally applicable exception, displacement, waiver, or extension. She acknowledges that section 112.0508(e) preserves Council's authority to consider an appeal notwithstanding failure to hold the hearing within the stated period and therefore does not seek automatic invalidation based upon expiration of that period. She further alleges that an extension of a state Map Act time limit under Government Code section 66451.1, if one existed, would not, standing alone, establish compliance with the independently stated local periods for the reasons alleged in paragraph 37. The City's mailing records support a June 22 bulk mailing, and

1 Petitioner's correct address appears on the interested-parties list; Petitioner therefore does
2 not rely on her own nonreceipt, unverified reports of nonreceipt by other persons, or the July
3 6 production of the recipient lists as an independent basis for invalidation. To the extent
4 competent evidence satisfying paragraph 45 supports a finding that the City's records did
5 not accurately reflect compliant mailing to required recipients or that a broader defect
6 existed in the mailing process, Petitioner alleges that such a founded mailing defect would
7 constitute an additional notice violation; absent such a showing, isolated nonreceipt of
8 otherwise properly mailed notice is not alleged to invalidate the City's action. Petitioner also
9 acknowledges SDMC section 112.0304(c)'s limitation concerning posting errors and section
10 112.0309's limitation concerning nonreceipt of notice given in accordance with the
11 governing requirements. She does not seek automatic invalidation from an isolated posting
12 irregularity or mere nonreceipt after proven compliant mailing. She alleges the appeal-
13 timing noncompliance, onsite-notice violations, and cumulative notice and fair-hearing
14 deprivation described above and below, and seeks relief upon the applicable showing of
15 prejudice, including Government Code section 65010(b) where applicable. Petitioner seeks
16 a judgment under Code of Civil Procedure section 1094.5(b) setting aside the approvals and
17 directing reconsideration under the correct legal standards, with the findings and evidentiary
18 support required by law.

19 **SECOND CAUSE OF ACTION**

20 **DENIAL OF A FAIR HEARING**

21 **Against the City and City Council; Real Parties joined as interested parties**

22 75. Petitioner incorporates paragraphs 1 through 74.

23 76. The Council was required to provide a fair adjudicatory hearing. Petitioner alleges that the
24 218-day appeal period outside the locally prescribed hearing timetable and the prolonged
25 scheduling uncertainty; the onsite-posting sequence, including correction of inaccurate
26 hearing information and placement of the corrected appeal sign at a materially less
27 conspicuous location than prior Planning Commission signage; the initially unresolved
28 separate appellant presentation time and inability to prepare in advance for an allotment

1 determined only by staff's completed presentation; late access to the all-way-stop analysis;
2 and denial of a continuance deprived her of a meaningful opportunity to prepare and
3 respond to the matters placed before the final decisionmaker. Before the hearing, Petitioner
4 had expressly raised with Council President LaCava and other City officials whether the
5 unresolved notice and appellant-presentation issues would leave legally sufficient time for
6 preparation and meaningful participation, and the hearing itself subsequently established
7 that the appellant's actual available presentation time was not determined until after staff
8 completed its presentation. The technical materials also required reconciliation of the waiver
9 measurements and coverage identified above. Petitioner does not allege that the July 6
10 production of the recipient lists or the then-unverified reports of nonreceipt independently
11 denied her a fair hearing. To the extent competent evidence satisfying paragraph 45
12 establishes that those reports reflected a broader defect in the required mailing process rather
13 than isolated nonreceipt of otherwise properly mailed notices, Petitioner alleges that such a
14 founded defect would constitute an additional component of the cumulative deprivation. The
15 fair-hearing claim does not depend on such a showing. Petitioner alleges that the remaining
16 timing, notice, scheduling, preparation, presentation-time, disclosure, and continuance
17 circumstances, considered cumulatively, impaired her opportunity to identify and contest the
18 material basis for approval. The claimed impairment concerns the material basis for the
19 relief granted and the opportunity to respond to it, not simply the technical nature of the
20 documents.

- 21 77. Petitioner's objection concerns the combined practical effect of these circumstances. The
22 lack of a reliable hearing date materially impaired her ability, as an unpaid resident with
23 competing responsibilities, to reserve preparation time, communicate with residents, and
24 coordinate a response. The applicant benefited from the continuing institutional preparation
25 and advocacy supporting approval described above. The later opportunity to speak did not
26 restore the lost opportunity to organize and prepare, and the 35-minute offer at the hearing
27 did not supply advance preparation time or technical review of newly available material.
28

1 78. The prejudice alleged is specific to preparation, investigation, organization, and response as
2 described above. Petitioner alleges on information and belief that the cumulative deprivation
3 caused substantial injury to her participation and that a different substantive result, including
4 materially modified lawful approvals, would have been probable with a meaningful
5 opportunity to develop and present the identified evidence and analysis. That allegation
6 concerns the material information and participation lost through the challenged process, not
7 merely an isolated technical defect or a prediction of how each Councilmember would vote.
8 The consequences of excluding affected participation are evaluated in light of the facts and
9 circumstances, not resolved merely by the named participant's attendance. (Scott v. City of
10 Indian Wells (1972) 6 Cal.3d 541, 550.) Petitioner seeks a new hearing following notice and
11 disclosure sufficient to permit meaningful participation, under a defined presentation
12 procedure and a schedule allowing a considered response to material technical submissions.

13 **THIRD CAUSE OF ACTION**
14 **INADEQUATE OR UNSUPPORTED FINDINGS**

15 **Against the City and City Council; Real Parties joined as interested parties**

16 79. Petitioner incorporates paragraphs 1 through 78.

17 80. By adopting the final resolutions, the Council adopted the findings printed in them.

18 Petitioner alleges that the findings supporting the five waivers do not adequately disclose
19 how the evidence establishes every material statutory predicate for the approved departures.
20 The claimed inadequacy concerns whether the findings and supporting materials coherently
21 identify the applicable measurements, affected lots, scope of relief, and physical-preclusion
22 basis so that the decision can be tested against the evidence, rather than reconstructed by
23 speculation.

24 81. The aggregate prediction of lost lots and effects on amenities does not disclose its derivation
25 in the identified findings or hearing materials. Although the Council report and incorporated
26 materials identify the standards, proposed dimensions, and affected-lot lists, and C1 supplies
27 a dimensional explanation for curb openings, Petitioner challenges the unreconciled use of
28 width and frontage, the stated coverage of that waiver compared with C2 and the Council

1 report, the Council report's inconsistent descriptions of the number of lots receiving relief,
2 and the relationship of the lot-depth departures and other requested relief to the collective
3 explanation. Her claim addresses the coherence and sufficiency of the findings and
4 supporting evidence for the waivers actually approved, not the absence of five separate
5 reports.

- 6 82. Petitioner alleges that the resulting waiver findings lack the required analytical support and
7 substantial evidence in light of the whole record. She seeks vacatur and reconsideration
8 rather than a judicial substitution of preferred factual findings for a legally supported
9 discretionary determination.

10 **FOURTH CAUSE OF ACTION**

11 **ULTRA VIRES APPLICATION OF FOOTNOTE 7: FAILURE TO USE REQUIRED** 12 **ZONING/REZONING PROCEDURES**

13 **Against the City and City Council; Real Parties joined as interested parties**

- 14 83. Petitioner incorporates paragraphs 1 through 82.
- 15 84. Petitioner challenges Respondents' July 7, 2026 use of Footnote 7 as legal authority for the
16 Project. The challenge is to the present application of that mechanism to the Project, based
17 on the alleged procedural invalidity of the earlier enactment and amendment described
18 above. Petitioner does not contend that Footnote 7 became unavailable merely because it
19 was later repealed; she contends that an earlier application or completeness date does not
20 resolve whether Footnote 7 was lawfully enacted and therefore lawfully available for
21 application to the Project in the first instance.
- 22 85. Footnote 7 changed the development regulations applied to RS-1-2 land in the Encanto Plan
23 Area by permitting a 5,000-square-foot minimum lot and, after the amendment enacted in
24 2022 through the 2021 Code Update, applying RS-1-7 development regulations to
25 qualifying subdivisions while retaining the RS-1-2 designation. Petitioner alleges that the
26 2019-2020 enactment and the amendment enacted in 2022 were not processed and noticed
27 through the zoning or rezoning procedure applicable to that substantive geographically
28 specific change.

- 1 86. San Diego Municipal Code sections 123.0102, 123.0103, and 123.0105 govern proposals to
2 change zoning and require Process Five for a zoning or rezoning decision. Petitioner alleges
3 that Footnote 7 functionally accomplished the challenged zoning change without
4 compliance with those mandatory procedures, including the notice associated with a
5 rezoning. Her notice contention includes the general-explanation and location-description
6 requirements of SDMC section 112.0305 and the combined presentation and review
7 deficiencies alleged above.
- 8 87. The applicant initially sought a rezone from RS-1-2 to RX-1-1 and later eliminated that
9 request while proceeding through an entitlement route that relied on Footnote 7. Petitioner
10 relies on that sequence because it shows that the Project moved from an express zoning-
11 change request to a mechanism that permitted materially different subdivision regulations
12 while leaving the RS-1-2 designation unchanged. The sequence therefore bears on
13 Petitioner's contention that Footnote 7 functioned as a substitute for the conventional zoning
14 or rezoning process rather than merely as an ordinary application of existing RS-1-2
15 regulations. Petitioner does not contend that the applicant's initial rezone request, standing
16 alone, establishes that Footnote 7 was invalid or that a rezone was legally required. To the
17 extent the zoning or rezoning procedures alleged above were mandatory for the substantive
18 change Footnote 7 accomplished, Respondents' use of that mechanism as legal authority for
19 the July 7 approvals was ultra vires and a failure to proceed according to law. Petitioner
20 seeks vacatur and lawful reconsideration without reliance on Footnote 7 if the Court
21 determines that the mechanism was not lawfully available for application to the Project.

22 **FIFTH CAUSE OF ACTION**

23 **ULTRA VIRES DENSITY BONUS LAW WAIVERS AND RESULTING HAA ERROR**

24 **Against the City and City Council; Real Parties joined as interested parties**

- 25 88. Petitioner incorporates paragraphs 1 through 87.
- 26 89. The thirteen restricted affordable ownership units supply the asserted eligibility basis for the
27 requested statutory benefits. Petitioner's challenge to the five waivers concerns the physical-
28

preclusion requirement of Government Code section 65915(e) applicable to each standard waived, including any adequately explained interaction among standards.

90. Respondents approved the five waivers on the findings and materials described above. For the reasons alleged in paragraph 61, Petitioner alleges that those materials do not establish the physical-preclusion predicate required by Government Code section 65915(e)(1) for the scope of the waivers granted.
91. Petitioner applies the Project-as-designed standard recognized in Bankers Hill 150. She does not allege that eligibility depends on accepting bonus units, that amenities must be removed, that the applicant must exhaust every alternative design, or that five separate technical reports or a particular verbal formula are mandatory. Her claim is that the statutory physical-preclusion predicate authorizing each challenged waiver was absent or inadequately established. To that extent, Respondents exceeded the waiver authority conferred by section 65915(e), and the challenged waivers were ultra vires.
92. The City's own findings identify numerical departures from applicable objective standards. Government Code section 65589.5, subdivision (j)(3), provides that receipt of a density bonus, incentive, concession, waiver, or reduction pursuant to section 65915 does not itself provide a basis for finding a housing development project inconsistent with an applicable plan, program, policy, ordinance, standard, requirement, or similar provision for purposes of the HAA. By its terms, subdivision (j)(3) addresses the HAA consequence of a benefit received pursuant to section 65915; it does not state conversely that HAA consistency or deemed consistency supplies the statutory predicate required for a waiver under section 65915(e)(1). Petitioner alleges that a purported waiver granted without the physical-preclusion predicate required by section 65915(e)(1) is not a lawful statutory bridge from an actual objective departure to HAA compliance.
93. For purposes of the objective standards on which Respondents relied, the Project could either comply with the standards as designed, be lawfully relieved from them through a valid Density Bonus Law waiver or reduction, or possess some independently applicable HAA basis requiring the Project to be treated as consistent with the particular standard. If

Respondents timely provided the written documentation required by Government Code section 65589.5, subdivision (j)(2)(A), any identified inconsistency required lawful resolution through correction, a valid statutory waiver or reduction, or another lawful route before the Project was treated as compliant. If the required documentation was not timely provided, subdivision (j)(2)(B) may have produced deemed consistency as to the affected provision or provisions. Such HAA deemed consistency does not itself establish the separate physical-preclusion predicate required for a Density Bonus Law waiver under section 65915(e)(1), or convert an otherwise unauthorized waiver into one lawfully granted pursuant to section 65915. Any contention that an independently applicable HAA provision sustains an approval without reliance on a challenged waiver presents a distinct legal and factual basis whose requirements and applicability must be established. Petitioner does not concede that such an independent basis exists for these approvals.

94. Respondents prejudicially erred to the extent they granted the challenged waivers without the statutory physical-preclusion predicate and then relied on those waivers as the basis for HAA treatment of the identified objective departures. Petitioner seeks vacatur, lawful reconsideration under the proper statutory standards, and declaratory relief concerning that statutory relationship as applied to the challenged approvals.

SIXTH CAUSE OF ACTION

EQUAL PROTECTION: GEOGRAPHICALLY SELECTIVE RACIAL DISCRIMINATION

(California constitutional claim)

Against the City and City Council; Real Parties joined as interested parties

95. Petitioner incorporates paragraphs 1 through 94.
96. Petitioner is a Black homeowner and resident of the Encanto Plan Area which was subject to Footnote 7's geographically selective mechanism, and was a homeowner and resident there throughout the adoption, amendment, maintenance, and challenged Project application alleged above. She alleges on information and belief that Respondents' adoption, maintenance, and July 7 application of that mechanism intentionally afforded residents of

1 the named predominantly Black and Latino Community Plan Areas unequal land-use
2 protection because of race, and that this purpose was a motivating factor in the challenged
3 treatment.

- 4 97. The asserted inference rests on the combined circumstances identified above, including the
5 selection of only two Community Plan Areas, both predominantly Black and Latino, the
6 unequal availability of ordinary RS-1-2 subdivision treatment, the alleged effective rezoning
7 through Footnote 7 without the rezoning procedures and associated notice identified above,
8 the inclusion of the change within an omnibus code update, the sequence and method of
9 processing the change, and its continuation for this Project after repeal. Petitioner alleges
10 that this procedure deprived affected residents and the affected Community Planning Group
11 of a meaningful opportunity to learn of, evaluate, participate in, critique, and oppose the
12 geographically targeted change in the manner ordinarily associated with a rezoning. She
13 further alleges that this present application causes the individual use-and-enjoyment,
14 resource-demand, and unequal-treatment injuries described above.
- 15 98. Petitioner alleges discriminatory purpose as a factual inference, not as an automatic
16 consequence of racial awareness, geographic differences, or disparate effect. She disputes
17 that the circumstances alleged are explained solely by the stated housing-opportunity
18 rationale. She seeks a declaration adjudicating that claim under article I, section 7 of the
19 California Constitution, applying the discriminatory-purpose framework reflected in *Baluyut*
20 and the authorities it discusses, and final writ relief concerning the challenged approvals.

21 **V. COSTS AND ATTORNEY FEES**

- 22 99. Petitioner seeks recoverable costs and reasonable attorney fees for compensable services
23 rendered by counsel under Code of Civil Procedure section 1021.5 and other applicable law,
24 upon the showing required by the governing provision. The public benefits sought include
25 meaningful community participation in the adjudication and enforcement of the land-use
26 and constitutional protections alleged above.

27 **VI. PRAYER FOR RELIEF**

28 WHEREFORE, Petitioner requests judgment as follows:

- 1 100. A peremptory writ of administrative mandate under Code of Civil Procedure section 1094.5
2 commanding Respondents to set aside Resolution Nos. R-316869 and R-316870 and the
3 permit and vesting tentative map approvals identified in paragraph 2, to the extent
4 determined unlawful by the Court;
- 5 101. A writ directing Respondents to reconsider the Project under the governing legal standards,
6 make the findings required by law on a proper administrative record, and provide a fair
7 hearing on matters requiring reconsideration;
- 8 102. Declaratory relief resolving the actual controversies concerning the lawfulness of Footnote
9 7's application to the Project, the physical-preclusion predicate and resulting HAA
10 treatment, the hearing procedures, and the equal-protection application pleaded, insofar as
11 necessary to resolve the validity of the challenged decisions;
- 12 103. Relief under Code of Civil Procedure section 1085 for a mandatory duty outside section
13 1094.5, to the extent the Court determines that remedy appropriate to an established claim;
- 14 104. Costs of suit and reasonable attorney fees as authorized by Code of Civil Procedure section
15 1021.5 and other applicable law, for compensable services rendered by counsel and upon
16 the required statutory showing; and
- 17 105. Such other and further relief as the Court deems just and proper.

18
19 Dated: September 18, 2026

20 AK Hetheru

21 Andrea Hetheru

22 Petitioner and Plaintiff in Propria Persona
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VERIFICATION

I, Andrea Hetheru, declare:

I am the Petitioner and Plaintiff in this action. I have read the foregoing Verified Petition for Writ of Administrative Mandate and Complaint for Declaratory Relief and know its contents.

The factual matters stated in it are true of my own knowledge, except those stated on information and belief, and as to those matters I believe them to be 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 18, 2026, at San Diego, California.

AK Hetheru

Andrea Hetheru