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CITY OF CORONADO

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GOV'T CODE § 6103

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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF SAN DIEGO**

10
11 CITY OF CORONADO,

12 Plaintiff and Petitioner,

13 v.

14 SAN DIEGO COUNTY LOCAL AGENCY
15 FORMATION COMMISSION, and DOES I
through XX, inclusive,

16 Defendants and Respondents.

Case No. 37-2016-00000183-CU-WM-CTL

**AMENDED PETITION FOR WRIT OF
MANDATE AND COMPLAINT FOR
DECLARATORY RELIEF**

(CCP §§ 1085, 1094.5; Gov. Code, § 56107)

Complaint filed: January 6, 2016
Trial Date: None Set

1 Petitioner and Plaintiff CITY OF CORONADO hereby petitions for a peremptory writ of
2 mandate pursuant to California Code of Civil Procedure sections 1085 and/or 1094.5, and seeks
3 declaratory and injunctive relief, directing Respondent and Defendant SAN DIEGO COUNTY
4 LOCAL AGENCY FORMATION COMMISSION to immediately comply with the Government
5 Code section 56133, part of the Cortese-Knox-Hertzberg Local Government Reorganization Act
6 of 2000, and to enjoin any actions in violation of that provision.

7 By this Petition and Complaint, Petitioner/Plaintiff alleges as follows:

8 **I. INTRODUCTION**

9 1. This action challenges certain acts and omissions of Respondent/Defendant SAN
10 DIEGO COUNTY LOCAL AGENCY FORMATION COMMISSION (“San Diego LAFCO”), for
11 abusing its discretion and failing to act in a manner required by law by refusing to exercise its
12 required jurisdiction under Government Code section 56133 to prevent the City of Imperial Beach
13 (“Imperial Beach”) from providing sewer services to a project within the City limits of Petitioner
14 and Plaintiff CITY OF CORONADO (“Coronado” or “Petitioner”).

15 2. Imperial Beach has stated it plans to provide sewer services to the new Coastal
16 Campus on the Naval Base Coronado Silver Strand Training Complex – South (“Coastal Campus
17 Project”), located wholly within the city limits of Coronado *and outside of the city limits and*
18 *sphere of influence of Imperial Beach.* As a general rule, cities are authorized to operate only
19 within their boundaries. Imperial Beach would have no authority to provide sewer services to the
20 Coastal Campus Project unless it applied for and received approval of San Diego LAFCO under
21 Government Code section 56133.

22 3. When Petitioner alerted San Diego LAFCO to this unpermitted and improper
23 extension of services within Petitioner’s borders, San Diego LAFCO refused to take any action to
24 stop it and ensure compliance with Government Code section 56133. Rather, on December 7,
25 2015, San Diego LAFCO determined that a 1967 agreement between Imperial Beach and the
26 Navy for a different project that has since been abandoned gave Imperial Beach the right to
27 unilaterally extend its sphere of influence and provide new sewer services within Coronado—
28 *without any input or authorization by Coronado.* San Diego LAFCO is supposed to act as an

1 independent “watchdog” agency to ensure, among other things, the efficient and non-duplicative
2 delivery of services by regulating proposals to extend services outside a city’s jurisdictional
3 boundaries. San Diego LAFCO’s abandonment of its statutory obligations and refusal to ensure
4 compliance with Government Code section 56133 is arbitrary and capricious, totally lacking in
5 evidentiary support, and a prejudicial abuse of discretion.

6 4. For these reasons, and others set forth below in this Complaint/Petition, the actions
7 of San Diego LAFCO are unlawful, invalid and unenforceable. Petitioner respectfully requests
8 that this Court (a) issue a writ of mandamus compelling San Diego LAFCO to comply with
9 Government Code section 56133 before authorizing any sewer services within Petitioner’s
10 boundaries; and (b) enter judgment declaring San Diego LAFCO’s acts unlawful under
11 Government Code section 56133.

12 **II. PARTIES**

13 5. Petitioner and Plaintiff CITY OF CORONADO is a municipality originally
14 organized and existing under the laws of the State of California. Coronado, also known as
15 Coronado Island, is a coastal city located in southern San Diego County directly west of the City
16 of San Diego. Coronado lies on a peninsula that is surrounded by the Pacific Ocean on the west
17 and San Diego Bay. The proposed Coastal Campus Project is located at the southern end of
18 Coronado, where the City connects to the mainland by a 10-mile strip of land called the Silver
19 Strand. The City of Coronado provides fire protection, police, and sewer services city-wide.

20 6. Respondent and Defendant SAN DIEGO COUNTY LOCAL AGENCY
21 FORMATION COMMISSION is, and was at all times relevant hereto, a public agency organized
22 and existing pursuant to the Cortese-Knox-Hertzberg Local Government Reorganization Act of
23 2000 (Gov. Code, § 56000 et seq.), which establishes a local agency formation commission for
24 each of California’s 58 counties. San Diego LAFCO is obligated to enforce certain laws and make
25 certain approvals thereunder, including the requirements and restrictions of the Cortese-Knox-
26 Hertzberg Local Government Reorganization Act at issue in this action.

27 7. Petitioner does not know the true names and capacities of the persons or entities
28 sued as Respondents/Defendants DOES I through XX, inclusive, and therefore sue these

1 respondents by their fictitious names. Petitioner will amend this Petition and Complaint to set
2 forth their names and capacities along with appropriate charging allegations when such
3 information has been ascertained.

4 **III. JURISDICTION AND VENUE**

5 8. This Court has jurisdiction to issue a peremptory writ of mandate under either
6 California Code of Civil Procedure section 1094.5 or California Code of Civil Procedure section
7 1085. The action against San Diego LAFCO arises under the laws of California.

8 9. Venue is proper in this Court under California Code of Civil Procedure sections
9 393, 394 and 395 because the real property affected by San Diego LAFCO's actions is located in
10 San Diego County.

11 **IV. LEGAL BACKGROUND**

12 10. San Diego LAFCO's actions are a direct affront to Coronado's municipal
13 sovereignty. It flies in the face of the long-standing procedures and practices for regulating
14 proposals of cities and districts to extend services beyond their boundaries. Under the Cortese-
15 Knox-Hertzberg Local Government Reorganization Act of 2000 (the "Act"), California law
16 provides a comprehensive statutory scheme governing, among other things, city incorporations,
17 special district formations, annexations to and detachments from cities or special districts, and city
18 and special district consolidations and dissolutions. To facilitate local decision-making, the Act
19 creates local agency formation commissions ("LAFCOs") in each county of California, and it
20 authorizes LAFCOs to make decisions on a variety of governmental planning and resource
21 allocation issues. These laws established local agency formation commissions (LAFCOs) in each
22 county to serve as "watch dog" agencies to "guard against the wasteful duplication of services that
23 results from indiscriminate formation of new local agencies or haphazard annexation of territory to
24 existing local agencies." (*Bookout v. Local Agency Formation Commission of Tulare County*
25 (1975) 49 Cal.App.3d 383, 388.) LAFCO responsibility includes decisions regarding the scope
26 and potential extension of services provided by cities and districts.

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1 11. The Act delineates the rights and obligations of LAFCOs and service providers.
2 Specifically, section 56133 provides for when and how a local agency may expand its services
3 beyond its boundaries:

4 A city or district may provide new or extended services by contract
5 or agreement outside its jurisdictional boundaries *only if it first*
6 *requests and receives written approval from the commission in the*
7 *affected county.*

8 (Gov. Code, § 56133(a) [emphasis added].) The legislative intent of section 56133 is to
9 strengthen the ability of LAFCOs to fulfill their mandate to promote the orderly development of
10 local agencies. (See, e.g., Sen. Local Gov. Com., Rep. on Assem. Bill No. 1335 (1993-
11 1994 Reg. Sess.)) State law allows LAFCO to approve extraterritorial services outside of an
12 agency's sphere of influence only under very limited circumstances. (Gov. Code, § 56133(b), (c).)

13 12. State law further limits what services even LAFCO can approve to be provided
14 within another city's boundaries. In general, cities cannot provide services outside of their
15 corporate boundaries in the absence of constitutional or statutory authorization. (See *City of*
16 *Oakland v. Brock* (1937) 8 Cal.2d 639, 641.) The California Constitution further prohibits the
17 annexation of a city by another city without the express approval of the affected city's voters.
18 (Cal. Const. art. XI, § 2.) Cities are specifically authorized to provide certain utility services, such
19 as water and electrical services, outside of their boundaries, but they cannot do so within the
20 boundaries of another city without the city's consent. (See Cal.Const., art. XI, § 9.) However,
21 neither the California Constitution nor state law allows a city to provide sewer service outside of
22 its boundaries. Sewer services may only be provided in another city's boundaries upon the consent
23 of the affected city.

24 13. These provisions all emphasize the significance of a city's adopted jurisdictional
25 and sphere boundaries, which are LAFCOs' principal tools in planning for future growth. The
26 need for LAFCO oversight and approval is readily apparent from the facts of this case, where
27 Imperial Beach proposes sewer services outside of its boundaries and without Coronado's
28 approval.

1 **V. GENERAL ALLEGATIONS**

2 14. Imperial Beach has stated that it plans to provide sewer services to the new Coastal
3 Campus on the Naval Base Coronado Silver Strand Training Complex – South (“Coastal Campus
4 Project”). The project site is located entirely within Coronado’s boundaries and is not in Imperial
5 Beach’s boundaries or sphere of influence as set by San Diego LAFCO. At no point has Petitioner
6 ever agreed that Imperial Beach could provide sewer services within Coronado’s boundaries for
7 the Coastal Campus Project.

8 15. Petitioner notified San Diego LAFCO that Imperial Beach was proposing to extend
9 its services within Coronado’s territory without Petitioner’s consent or LAFCO authorization. On
10 April 9, 2015, San Diego LAFCO staff issued a notification that tentatively concluded that
11 Imperial Beach’s plans were exempt under Government Code section 56133(e)(4)¹ from San
12 Diego LAFCO’s oversight because of a 1967 agreement between the Navy and Imperial Beach
13 providing for sewer service for the since-abandoned Naval Radio Station.

14 16. Petitioner was greatly surprised by this conclusion by San Diego LAFCO staff, as
15 there appeared to be no basis for asserting an exemption to section 56133. The provision relied on
16 by staff, section 56133(e)(4), exempts out-of-agency service agreements if a city was providing
17 the “extended service on or before January 1, 2001.” This common-sense exemption (for “an
18 expanded service”) merely grandfathers service to existing development. (Gov. Code,
19 § 56133(e)(4).) Indeed, it is the general practice of LAFCOs to interpret new and extended
20 services to involve the actual delivery of services to a specific property. In this case, Imperial
21 Beach was not already providing services to the Coastal Campus Project and the 1967 agreement,
22 even if construed as operable and valid, was for an entirely different project, so there was no basis
23 for the application of this or any other section 56133 exemption to the Coastal Campus Project.

24 17. Accordingly, Petitioner submitted comments to San Diego LAFCO on May 1,
25 2015, and on July 7, 2015, requesting San Diego LAFCO to exercise its jurisdiction over the

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27 ¹ Section 56133 was amended, effective January 1, 2016, to change the enumeration of its
28 subsections. For ease of reference, this Petition and Complaint refers to the new subsections.

1 proper provision of sewer services to the Coastal Campus Project. On or about May 26, 2015,
2 Imperial Beach also submitted comments to San Diego LAFCO indicating that the City recognizes
3 the authority of San Diego LAFCO to determine the appropriate utility service boundaries for
4 municipalities and would not provide services beyond the current service levels without
5 authorization from LAFCO.

6 18. On August 7, 2015, San Diego LAFCO staff formalized its conclusions in a
7 document entitled "Preliminary Determination." Among the conclusions in the Preliminary
8 Determination was that the continued provision of sewer service by Imperial Beach to the Coastal
9 Campus Project within Coronado is not subject to LAFCO purview pursuant to Government Code
10 Section 56133(e)(4).

11 19. On or about September 15, 2015, Petitioner filed a request for reconsideration,
12 which San Diego LAFCO scheduled for hearing at its regularly scheduled meeting on
13 December 7, 2015. On December 7, San Diego LAFCO adopted the findings in the Preliminary
14 Determination and denied Petitioner's request for reconsideration.

15 20. Coronado and Imperial Beach respect one another's boundaries and respective
16 rights to decide how municipal services are provided within their boundaries. Coronado has been
17 informed, and on that basis alleges, that Imperial Beach does not desire to be a party to or
18 otherwise participate in this litigation and takes no position on whether LAFCO approval is
19 required before it can serve the Coastal Campus Project.

20 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

21 21. Petitioner has performed any and all conditions precedent to filing this Petition and
22 Complaint, and has exhausted any and all administrative remedies. At various times, Petitioner
23 has submitted written correspondence, objections and appeals to San Diego LAFCO regarding its
24 failure to proceed in the manner required by law and its prejudicial abuse of discretion.

25 22. By this Petition, Petitioner requests that San Diego LAFCO provide a true and
26 correct copy of any administrative record to be lodged with the court before the hearing date on
27 the peremptory writ of mandate.

28

1 requested as sewer services will continued to be provided in Coronado pursuant to invalid
2 agreements and in violation of applicable laws.

3 **SECOND CAUSE OF ACTION**

4 **Declaratory Judgment**

5 28. Petitioner incorporates by reference the allegations set forth in paragraphs 1
6 through 27, above.

7 29. An actual controversy has arisen and now exists between Petitioner/Plaintiff and
8 San Diego LAFCO regarding the provision of extra-territorial sewer services in Coronado.
9 Petitioner/Plaintiff contends that San Diego LAFCO must prohibit Imperial Beach or any other
10 entity from providing such services without prior approval from San Diego LAFCO and/or
11 Coronado and, thus, San Diego LAFCO is acting in violation of Government Code section 56133.
12 San Diego LAFCO denies it has violated Government Code section 56133 and contends that the
13 provision of sewer services within Coronado and outside of Imperial Beach is lawful.

14 30. Petitioner/Plaintiff therefore seeks a judicial declaration as to these issues.

15 **VI. PRAYER FOR RELIEF**

16 WHEREFORE, Petitioner respectfully prays for judgment as follows:

17 1. For a peremptory writ of mandate ordering Respondent/Defendant SAN DIEGO
18 COUNTY LOCAL AGENCY FORMATION COMMISSION to:

- 19 a. Set aside and vacate the December 7, 2015, decision declining to exercise
20 the required jurisdiction under Government Code section 56133;
- 21 b. Review any provision of services proposed by Imperial Beach within the
22 City of Coronado, including, but not limited to, for the Coastal Campus
23 Project, in a manner that complies with Government Code section 56133
24 and all other applicable state, federal and local laws, regulations,
25 ordinances, policies and practices.

26 2. For a declaratory judgment setting forth the respective rights and duties of the
27 Petitioner/Plaintiff and San Diego LAFCO with respect to the provision of sewer services in
28 Coronado, and, specifically, that this Court issue a declaratory judgment (a) that San Diego

1 LAFCO's acts unlawful under Government Code section 56133, and (b) that the provision of
2 sewer service by Imperial Beach to Coastal Campus requires San Diego LAFCO's authorization
3 and is not exempt from Government Code section 56133;

4 3. For costs of suit and attorneys' fees incurred herein; and

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

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8 DATED: June 20, 2016

MEYERS, NAVE, RIBACK, SILVER & WILSON

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By: 

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John Bakker
Shaye Diveley
Attorneys for Plaintiff and Petitioner
CITY OF CORONADO

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1 PROOF OF SERVICE

2 STATE OF CALIFORNIA, COUNTY OF ALAMEDA

3 At the time of service, I was over 18 years of age and **not a party to this action**. I am
4 employed in the County of Alameda, State of California. My business address is 555 12th Street,
Suite 1500, Oakland, CA 94607.

5 On June 20, 2016, I served true copies of the following document(s) described as
6 **AMENDED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR
DECLARATORY RELIEF** on the interested parties in this action as follows:

7 MICHAEL G. COLANTUONO Attorneys for Defendant and Respondent
MColantuono@chwiaw.us SAN DIEGO COUNTY LOCAL
8 DAVID J. RUDERMAN AGENCY FORMATION
DRuderman@chwiaw.us COMMISSION
9 GARY B. BELL
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10 COLANTUONO, HIGHSMITH &
WHATLEY, PC
11 300 S. Grand Avenue, Suite 2700
Los Angeles, California 90071-3137
12 Telephone: (213) 542-5700
13 Facsimile: (213) 542-5710

14 **BY MAIL:** I enclosed the document(s) in a sealed envelope or package addressed to the
15 persons at the addresses listed in the Service List and placed the envelope for collection and
16 mailing, following our ordinary business practices. I am readily familiar with Meyers, Nave,
17 Riback, Silver & Wilson's practice for collecting and processing correspondence for mailing. On
the same day that the correspondence is placed for collection and mailing, it is deposited in the
ordinary course of business with the United States Postal Service, in a sealed envelope with
postage fully prepaid.

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

20 Executed on June 20, 2016, at Oakland, California.

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22 _____
Cynthia Saucedo
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