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SOUTHERN CALIFORNIA
ASSOCIATION OF GOVERNMENTS

EXEMPT FROM FILING FEES
GOV'T CODE § 6103

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES, CENTRAL DISTRICT

ORANGE COUNTY COUNCIL OF GOVERNMENTS, a Joint Powers Agency; CITY OF REDONDO BEACH, a California charter city; CITY OF LAKEWOOD, a municipal corporation; CITY OF TORRANCE, a California charter city; CITY OF CERRITOS, a California charter city; CITY OF DOWNEY, a California charter city; CITY OF WHITTIER, a California charter city,

Petitioners,

v.

GUSTAVO VELASQUEZ, Interim Director of Housing and Community Development; CALIFORNIA DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT; and DOES 1 through 50, inclusive,

Respondents.

SOUTHERN CALIFORNIA ASSOCIATION OF GOVERNMENTS, a Joint Powers Agency,

Real Party in Interest.

Case No. 21STCP01970

NOTICE OF RULING REGARDING DEMURRERS TO VERIFIED FIRST AMENDED PETITION FOR WRIT OF MANDATE

Date: November 18, 2021
Time: 1:30 p.m.
Dept.: 82

Judge: Mary H. Strobel
Dept: 82
Action Filed: June 21, 2021
Trial Date: None Set

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that the Demurrers to the Verified First Amended Petition for Writ of Mandate filed by Real Party in Interest Southern California Association of Governments ("SCAG") and by Respondents California Department of Housing and Community Development and Gustavo Velasquez, Interim Director of California Department of Housing and Community Development (collectively "Respondents"), came on regularly for hearing on November 18, 2021 at 1:30 p.m. before the Honorable Mary H. Strobel in Department 82 of the above-entitled Court. June Ailin, Allison Flowers and Pam Lee of Aleshire & Wynder, LLP appeared on behalf of Petitioners; Erica Lee, Deputy Attorney General appeared on behalf of Respondents; and Deborah J. Fox and Margaret W. Rosequist of Meyers Nave appeared on behalf of Real Party in Interest.

The Court ruled as follows:

1. The Demurrers of both Real Party In Interest and Respondents sustained without leave to amend.

2. The Court adopted its Tentative Ruling as final, a copy of which is attached hereto as Exhibit A.

DATED: November 19, 2021 MEYERS NAVE

By: M. W. Rosequist

DEBORAH J. FOX
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Attorneys for Real Party in Interest
SOUTHERN CALIFORNIA ASSOCIATION OF GOVERNMENTS

5019573

EXHIBIT A

DEPARTMENT 82 LAW AND MOTION RULINGS

Hon. Mary H. Strobel

The clerk for Department 82 may be reached at (213) 893-0530.

Case Number: 21STCP01970 **Hearing Date:** November 18, 2021 **Dept:** 82

Orange County Council of Governments, et al., *v.* *Gustavo Velasquez, et al.*	Judge Mary Strobel Hearing: November 18, 2021
21STCP01970	Tentative Decision on Demurrers to First Amended Petition for Writ of Mandate

Respondent California Department of Housing and Community Development "HCD" or "Respondent") and Real Party in Interest Southern California Association of Governments ("SCAG" or "Real Party") demur for lack of jurisdiction to the first amended petition for writ of mandate filed by Petitioners Orange County Council of Governments ("OCCOG"), City of Redondo Beach, City of Lakewood, City of Torrance, City of Cerritos, City of Downey, and City of Whittier (collectively "Petitioners").

Judicial Notice

SCAG's RJN Exhibits A-D – Granted. (Evid. Code § 452(b), (c), (h).)

SCAG's RJN Exhibits E-H – Denied. (Cal. Rules of Court, Rule 8.1115(a); *B.F. v. Sup.Ct.* (2012) 207 Cal.App.4th 621, 627, fn. 2 [denying judicial notice because "trial court decisions are not precedent"].)

Petitioners' RJN Exhibits A-F – Granted. (Evid. Code § 452(b), (c), (h).)

Petitioners' RJN Exhibits G, H – Denied. Irrelevant. See analysis below.

Background

A demurrer accepts as true "all material facts properly pleaded and matters subject to judicial notice, but not deductions, contentions, or conclusions of law or fact." (*Stonehouse Homes LLC v. City of Sierra Madre* (2008) 167 Cal. App. 4th 531, 538.)

The FAP alleges the following:

"Every five to eight years, HCD oversees a [statutory] process known as the regional housing needs assessment ('RHNA')." (FAP ¶ 17.) "At least two years before scheduled housing element updates within a region of the state are to occur, HCD will assign that region its share of the state's housing needs, in consultation with the council of governments ('COG') located within that region. Gov't Code §§ 65584(b), 65584.01. SCAG is the regional COG for several southern California counties, including Imperial County, Los Angeles County, Orange County, Riverside County, San Bernardino County, and Ventura County, and the incorporated cities within each of those counties." (Id. ¶ 17.)

"Petitioner Orange County Council of Governments ('OCCOG') is a joint powers public agency … [which] serves as a sub-regional planning organization on behalf of its thirty-four members, which include incorporated cities within its boundaries. In conjunction with the Southern California Association of Governments, OCCOG assists in the development and analysis of planning documents prepared as part of the allocation of its members' regional housing needs assessment under statewide land use laws." (Id. ¶ 1.) Cities of Redondo Beach, Lakewood, Torrance, Cerritos, Downey, and Whittier are members of SCAG and "subject to the regional housing needs assessment determined by [HCD] and allocated by [SCAG.]" (Id. ¶¶ 2-7.)

"[I]n 2019, SCAG and HCD began developing the RHNA determination for SCAG's region for the 2021-2029 planning period (also known as the 6th cycle). Concurrently, SCAG began to develop its methodology for allocating the projected regional RHNA determination among the local governments within SCAG's jurisdiction." (Id. ¶ 24.)

"On August 22, 2019, HCD provided SCAG a letter informing it of HCD's draft RHNA determination for the SCAG region. HCD assigned a total of 1,344,740 dwelling units, based on existing and projected housing needs, as SCAG's RHNA determination to be distributed among the local governments located within the SCAG region." (Id. ¶ 25.) "Also on August 22, 2019, OCCOG sent a letter to SCAG regarding proposed RHNA methodology options to distribute the number of dwelling units from HCD's anticipated RHNA determination for the SCAG region." (Id. ¶ 26.)

"On September 18, 2019, within the requisite 30-day period to object under Government Code section 65584.01(c), SCAG submitted a formal objection to HCD of HCD's draft RHNA determination for the SCAG region." (Id. ¶ 27.) SCAG's objections are summarized in the FAP. (Ibid.) "Pursuant to Government Code section 65584.01(c)(2)(b), SCAG provided a proposed alternative RHNA determination, as well as an analysis of why the proposed alternative would be a more reasonable application of the methodology and assumptions to be used by HCD to determine SCAG's RHNA. According to SCAG's proposed alternative determination, the RHNA determination for the SCAG region should be between 823,808 and 920,772 dwelling units." (Id. ¶ 29.)

"On October 15, 2019, HCD provided SCAG with its final RHNA determination for the region. HCD advised that it had not altered its RHNA approach based on SCAG's objection, with the exception of an update to the cost-burden data because it had obtained more recent data. As a result of this, HCD determined that SCAG's housing need was 1,341,827 total dwelling units among the four income categories for SCAG to distribute among local governments." (Id. ¶ 30.)

"Petitioners are informed and believe, and on that basis allege, that SCAG subsequently submitted its draft 6th Cycle RHNA Methodology for HCD's review. On December 19, 2019, SCAG sent HCD a letter regarding HCD's final RHNA determination and advised that it had incorporated the determination in the development of SCAG's RHNA allocation methodology under review by HCD. SCAG reiterated its earlier objections that HCD did not base its determination on SCAG's total regional population forecast, as required by Government Code section 65584.01(a). SCAG also objected to HCD's failure to meet with SCAG, as also required by Government Code section 65584.01(a). SCAG ultimately requested a meeting with HCD to discuss realistic ways to increase housing for the SCAG region." (Id. ¶ 34.)

"On January 13, 2020, HCD sent SCAG a letter, in which it advised that it had completed its review of SCAG's RHNA methodology and found that it furthered the five statutory objectives of RHNA." (Id. ¶ 35.)

"On or about September 3, 2020, SCAG notified each local government within the SCAG region of their share of the RHNA allocation." (Id. ¶ 38.) "Petitioners are informed and believe, and on that basis allege, that SCAG received 52 appeals of its RHNA allocation from various local governments within the SCAG region, including appeals from some of OCCOG's members." (Id. ¶ 40.) "After considering the 52 appeals at a number of appeal hearings in January and February, 2021, SCAG denied all but two of the appeals and upheld its RHNA allocation for each local government within its jurisdiction." (Id. ¶ 44.)

Petitioners allege that "HCD's determination of SCAG's regional housing needs (which in turn implicates the regional housing needs of OCCOG's members, as well as Redondo Beach, Lakewood, Torrance, Cerritos, Downey, and Whittier) was incorrect and lacking in substantial evidentiary support for at least three reasons." (Id. ¶ 49.)

"Based on the foregoing errors, HCD's RHNA determination that SCAG's regional housing need totals 1,341,827 units is erroneous and based on an incorrect application of the law. HCD's failure to comply with Government Code section 65584.01(a) and SB 828, as well as its use of an unreasonable vacancy rate, was arbitrary and capricious." (Id. ¶ 53.)

Petitioners "pray that a writ of mandate be issued by this Court to order HCD to vacate and set aside its RHNA determination for the SCAG region, change the input of information utilized in calculating its RHNA determination as described herein, and conduct a new assessment for the SCAG region in compliance with state local planning laws under Government Code section 65580 et seq." (Id. ¶ 55.)

Procedural History

On June 21, 2021, Petitioner OCCOG filed the original petition for writ of mandate. On August 31, 2021, Petitioners filed the operative, first amended petition for writ of mandate ("FAP").

On September 30, 2021, and October 15, 2021, HCD and SCAG filed their demurrers to the FAP and meet and confer declarations. The court has received Petitioners' oppositions and HCD's and SCAG's replies.

Analysis

A demurrer tests the sufficiency of a pleading, and the grounds for a demurrer must appear on the face of the pleading or from judicially noticeable matters. The demurrer admits all material facts properly pleaded. (CCP 430.30(a); *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) "A demurrer tests the pleadings alone and not the evidence or other extrinsic matters." (*Hahn v. Mirda* (2007) 147 Cal.App.4th 740, 747.)

Summary of Applicable Law – CCP Section 1085

The petition is brought pursuant to CCP section 1085. There are two essential requirements to the issuance of an ordinary writ of mandate under section 1085: (1) a clear, present, and ministerial duty on the part of the respondent, and (2) a clear, present, and beneficial right on the part of the petitioner to the performance of that duty. (C*alifornia Ass'n for Health Services at Home v. Department of Health Services* (2007) 148 Cal.App.4th 696, 704.) "An action in ordinary mandamus is proper where … the claim is that an agency has failed to act as required by law." (Id. at 705.) "A petition for traditional mandamus is appropriate in … actions brought to attack, review, set aside, or void a quasi-legislative … or ministerial determination, or decision of a public agency." (*California Water Impact Network v. Newhall County Water Dist*. (2008) 161 Cal.App.4th 1464, 1483.) "The trial court reviews an administrative action pursuant to Code of Civil Procedure section 1085 to

determine whether the agency's action was arbitrary, capricious, or entirely lacking in evidentiary support, contrary to established public policy, unlawful, procedurally unfair, or whether the agency failed to follow the procedure and give the notices the law requires." (Ibid.)

"'On questions of law arising in mandate proceedings, [the court] exercise[s] independent judgment.' …. Interpretation of a statute or regulation is a question of law." (*Christensen v. Lightbourne* (2017) 15 Cal.App.5th 1239, 1251.)

The Court Lacks Jurisdiction Over the Petition

Based on *City of Irvine v. Southern California Assn. of Governments* (2009) 175 Cal.App.4th 506, SCAG and HCD contend that the court lacks jurisdiction over the "RHNA Challenge" pleaded in the petition. (SCAG Dem. 11-16; HCD Dem. 10-14.) The court agrees that, pursuant to *City of Irvine*, this court lacks jurisdiction over the writ claim as pleaded in the FAP.

In *City of Irvine*, "[t]he issue presented [was] whether the administrative procedure established under Government Code section 65584 et seq. … to calculate a local government's allocation of the regional housing needs assessment (RHNA) is intended to be the exclusive remedy for the municipality to challenge that determination and thereby preclude judicial review of the decision." (*City of Irvine, supra,* 175 Cal.App.4th at 510.) Stated differently, the case "present[ed] the question of whether the administrative procedure created to determine a municipality's RHNA allocation precludes judicial review of that decision." (Id. at 512.) The Court of Appeal answered this question in the affirmative and upheld the trial court's order sustaining a demurrer for lack of jurisdiction.

The Court summarized the detailed statutory scheme under Government Code section 65580 et seq. (Id. 512-516), and noted the general rule that "the Legislature cannot alter the jurisdiction over extraordinary writs ... prescribed by the Constitution" but may "indirectly regulate the jurisdiction of courts by abolishing or limiting substantial rights" (Id. 516-17). The Court of Appeal then analyzed the jurisdictional question presented as follows:

> The trial court reached the correct result in this case. Concededly, the RHNA statutes do not expressly bar a municipality from judicially challenging its RHNA allocation. But, as the foregoing summary of the statutory procedure reflects, the nature and scope of a general plan's housing element and the length and intricacy of the process created to determine a municipality's RHNA allocation reflects a clear intent on the part of the Legislature to render this process immune from judicial intervention.
>
> ….[¶]

> The RHNA allocation process must be completed in advance of the revision of a municipality's general plan housing element. It involves several intricate steps. First, it requires the setting of statewide and regional housing goals and the creation of a methodology to quantify the goals and distribute the projected additional housing needs throughout the state. This step mandates consultation between HCD and the respective councils of government. Second, each respective council of government must create a methodology for distributing its region's housing needs to the local governments under its jurisdiction. This requires not only consultation between the regional council of government and local governments, but also public hearings to obtain input from a wide variety of concerned parties. Third, the council of government's proposed allocation of housing units to local governments is subject to review and reassessment at the request of individual governments. Ultimately, each council of government's final RHNA allocation is subject to further review and revision by HCD to ensure it is consistent with the region's housing needs.
>
> ….[¶]
>
> Under the RHNA procedure, when a local government successfully obtains a downward revision of its RHNA allocation, the council of governments must then reallocate the excess units to other jurisdictions within the region. [§65584.05(e),(g)] Thus, one jurisdiction's successful appeal affects the RHNA allocation to other local jurisdictions. It does not merely result in the elimination of one municipality's excess RHNA allocation.
>
> Consequently, allowing this judicial action to proceed would require the joining of all affected local jurisdictions in the lawsuit, thereby precluding each affected municipality's completion of its housing element revision. As the trial court noted, “allowing judicial review would ... delay the allocation for an entire region” and “essentially bottleneck the process and create gridlock while a particular city's case winds through the courts.” Plaintiff's claim is thus not only contrary to the relief sought in its petition, but would effectively nullify the cited statutory provisions. “An interpretation that renders related provisions nugatory must be avoided....” (*City of Irvine, supra,* 175 Cal.App.4th at 517-518.)

The Court further stated: “Support for our decision also exists in the 2004 amendments to the RHNA statutes. Before those amendments, former section 65584, subdivision (c)(4) declared, ‘The determination of the council of governments [concerning a city or county's share of the state housing need] ... shall be subject to judicial review pursuant to Section 1094.5 of the Code of Civil Procedure.’…. [W]e conclude the 2004 repeal of the judicial remedy reinforces our conclusion the Legislature clearly intended to eliminate judicial remedies for challenging a municipality's RHNA allocation…. [Under rules of statutory construction,] [w]e must presume the Legislature's deletion of the express provision allowing review by administrative mandamus reflects its intent to preclude that judicial remedy to challenge a municipality's RHNA allocation under the revised law.” (Id. at 522.)

Finally, the Court concluded: “Given the RHNA statutes' nature, their allowance for public input, and their lengthy and extensive administrative procedure, it is clear the Legislature intended to eliminate resort ***to traditional judicial remedies*** to challenge a local government's regional housing needs allocation so as to avoid the disruption of local planning that would result from

interference through the litigation process. Thus, contrary to plaintiff's argument, the statutes governing the RHNA allocation procedure do reflect a clear intent to preclude judicial intervention in the process and the trial court properly found it lacked jurisdiction to review the propriety of plaintiff's RHNA allocation." (Id. at 523 [emphasis added].)

At issue in *City of Irvine* was Irvine's challenge to the RHNA allocation made by SCAG. (*City of Irvine*, 175 Cal.App.4th at 512.) Irvine sought to have the court vacate and set aside the draft RHNA allocation, the appeals board's denial of its appeal, and the final RHNA allocation plan. (Id. at 511-512.) Irvine also sought a recalculation of its allocation of housing in accordance with several statutes. (Id. at 512.)

Here, Petitioners attack the RHNA determination of HCD, not SCAG. (See FAP ¶¶ 50-55.) The holding of *City of Irvine,* however, applies with equal force to Petitioners' writ petition. HCD's RHNA allocation is the first step in the complex statutory process. (Gov. Code §§ 65584, 65584.01; see generally SCAG Dem. 5- 7 [summarizing statutory scheme].) Any challenge to HCD's determination does not just call into question how HCD develops the allocation, but such a challenge impacts all the other steps in the RHNA process. Whether the challenge is to the actions of a regional council of government or to HCD, "it is clear [from the statutory scheme] the Legislature intended to eliminate resort to traditional judicial remedies to challenge a local government's regional housing needs allocation so as to avoid the disruption of local planning that would result from interference through the litigation process." (*City of Irvine, supra* at 522.)

As argued in the demurrers and analyzed in *City of Irvine*, judicial review of Petitioners' writ claims would cause gridlock and delay. SCAG "serves as a planning organization on behalf of its members, which include six counties and 191 cities, to develop (of relevance here) long-range regional housing needs allocations." (FAP ¶ 12.) Hundreds of jurisdictions that would be potentially impacted by a ruling in favor of Petitioners are not present in this action. (See Gov't Code § 65584.05(g) and § 65300.) "[A]llowing this judicial action to proceed would require the joining of all affected local jurisdictions in the lawsuit, thereby precluding each affected municipality's completion of its housing element revision." (*City of Irvine, supra,* at 518.)

Based on the foregoing, the court lacks jurisdiction over the RHNA challenge pleaded in the petition.

HCD also contends that "[e]ven if Petitioners had a judicial remedy … they have waited too long to bring their suit and their unreasonable delay has prejudiced Respondents …." (HCD Dem. 15.) SCAG makes a similar argument. (SCAG Dem. 13-14.) While HCD and SCAG may have a plausible claim for laches, they have not fully developed the argument. Because Petitioners lack a judicial remedy for the claim pleaded, the court need not further analyze this alternative argument.

Petitioners' Contentions Are Unpersuasive

Petitioners make several arguments in opposition.

Petitioners point out that "they are seeking review of the regional housing needs determination made by HCD, rather than the allocation later made by SCAG." (Oppo. to HCD 11.) However, Petitioners do not demonstrate that this distinction would change the application of *City of Irvine* to the FAP. As noted above, in *City of Irvine*, "[t]he issue presented [was] whether the administrative procedure established under Government Code section 65584 et seq. … to calculate a local government's allocation of the regional housing needs assessment (RHNA) is intended to be the exclusive remedy for the municipality to challenge that determination and thereby preclude judicial review of the decision." (*City of Irvine, supra,* 175 Cal.App.4th at 510.) The issue presented in *City of Irvine* does not differentiate between defendants, instead focusing on the integrity of the RHNA scheme, its administrative procedures as a whole, and whether those procedures are the exclusive remedy for a municipality's challenge to its housing allocation. In addition, *City of Irvine* held that the "structure and scope of the RHNA statutes reflect a clear intent ***to vest in HCD*** and the respective council of governments, along with extensive input from local governments and the public, the authority to set the RHNA allocation for each government." (Id. at 519 [emphasis added].) The Court, therefore, considered HCD's role and vested authority when it held that the RHNA statues precluded judicial review.

Petitioners also point out that they bring their writ petition under CCP section 1085, while *City of Irvine* was presumably brought under CCP section 1094.5. (Oppo. to HCD 11.) Relatedly, Petitioners contend that the 2014 amendments to the RHNA process do not indicate an intent to remove traditional mandate from the court's purview. (Id. at 15-16.) Although not stated explicitly in *City of Irvine*, it seems possible from the Court's procedural summary that the underlying writ petition was brought under CCP section 1094.5. (*City of Irvine, supra,* at 512 [noting that petitioner alleged an unfair trial, a decision not supported by findings or evidence, and a prejudicial abuse of discretion].) However, the Court's analysis was not limited to judicial review under CCP section 1094.5. The Court stated: ""Given the RHNA statutes' nature, their allowance for public input, and their lengthy and extensive administrative procedure, it is clear the Legislature intended to eliminate resort ***to traditional judicial remedies*** to challenge a local government's regional housing needs allocation so as to avoid the disruption of local planning that would result from interference through the litigation process." (Id. at 523 [emphasis added].) Furthermore, the Court found the 2004 amendments significant not solely because they removed a judicial remedy under CCP section 1094.5, but more broadly because the amendments "reinforce[] our conclusion the Legislature clearly intended ***to eliminate judicial remedies*** for challenging a municipality's RHNA allocation." (Id. at 522 [emphasis added].) This holding references "judicial remedies" in the plural, determines that "judicial intervention" is precluded, and is broad enough to cover both sections 1085 and 1094.5. The Court's rationale for finding a lack of judicial jurisdiction applies the same whether the writ petition contends that the respondent "prejudicially abused its discretion" in the RHNA allocation (see CCP § 1094.5(b), or alternatively, made an arbitrary and capricious decision subject to review under CCP section 1085.

Petitioners cite the general rule that "the jurisdiction of the courts cannot be lightly or implicitly taken away." (Oppo. to HCD 11.) The Court in *City of Irvine* considered this issue and noted that "[t]he intent to divest the court of jurisdiction ... is not read into [a] statute unless that result is expressly provided or otherwise clearly intended." (*City of Irvine, supra* at 516-517.) The Court held that "the length and intricacy of the process created to determine a municipality's RHNA allocation reflects a clear intent on the part of the Legislature to render this process immune from

judicial intervention." (Ibid.) Thus, the Court addressed the exact issue raised by Petitioners, and its holding applies here.

Petitioners also rely on *International Assn. of Fire Fighters, Local 188, AFL-CIO v. Pub. Empl. Relations Bd.* (2011) 51 Cal. 4th 259 and *Sims v. Department of Corrections and Rehabilitation* (2013) 216 Cal.App.4th 1059. (See Oppo. to HCD 12-15.) These cases analyzed different statutory schemes and circumstances, as argued persuasively in HCD's and SCAG's replies. (See HCD Reply 7-9; SCAG Reply 10-11.) "'It is axiomatic that language in a judicial opinion is to be understood in accordance with the facts and issues before the court. An opinion is not authority for propositions not considered.'" (*People v. Knoller* (2007) 41 Cal.4th 139, 154-55.) *City of Irvine*, in contrast, analyzed the specific issue presented here – whether Petitioners may challenge an RHNA allocation in court. Because *City of Irvine* decides that question, case law discussing entirely different statutory schemes is inapposite.

Petitioners contend that "traditional mandamus is always available in particular contexts" and they cite discussion in *International Assn. of Fire Fighters, supra* of "three narrow exceptions" to the limitations on judicial review in Government Code section 3509.5 of the Meyers Milias-Brown Act. (Oppo. to HCD 11-12.)

In *International Assn. of Fire Fighters, supra*, the California Supreme Court held: "In section 3509.5, the Legislature has not expressly provided or otherwise clearly indicated that under California's MMBA superior courts are prohibited in all circumstances from exercising traditional mandamus jurisdiction to review a PERB decision refusing to issue a complaint. In particular, the Legislature has not explicitly barred superior court traditional mandamus review in the limited circumstances in which such review is available for similar agency decisions under the federal NLRA and the state ALRA. Accordingly, we agree with the Court of Appeal here that when PERB refuses to issue a complaint under the MMBA, a superior court may exercise mandamus jurisdiction to determine whether PERB's decision violates a constitutional right, exceeds a specific grant of authority, or is based on an erroneous statutory construction. We stress, however, that it remains true that a refusal by PERB to issue a complaint under the MMBA is not subject to judicial review for ordinary error, including insufficiency of the evidence to support the agency's factual findings and misapplication of the law to the facts, or for abuse of discretion. Also, to avoid undue interference with the discretion that the Legislature has intended PERB to exercise, courts must narrowly construe and cautiously apply the exceptions we here recognize." (*International Assn. of Fire Fighters, supra,* 51 Cal.4th at 271.)

International Ass. of Fire Fighters held the three narrow exceptions applied because the law at issue in that case, the Meyers-Milias-Brown Act (MMBA) was patterned after the federal National Labor Relations Act (NLRA), for which federal courts had found these three exceptions, and because the relevant provision of the MMBA did not expressly provide or otherwise clearly indicate the Legislature's intent to prohibit superior courts from exercising traditional mandamus jurisdiction in all cases. (51 Cal.4th at 268, 271.) That case did not create a rule of general applicability, but was limited to the MMBA context. In contrast, *City of Irvine* analyzed the issue of judicial review of RHNA allocations broadly and did not limit its conclusion to specific types of legal or factual arguments.

Finally, Petitioners contend that "HCD does not mention … that a challenge to a housing allocation that is pending right now in which lack of jurisdiction has not been raised as grounds for a demurrer or a defense." (Oppo. to HCD 17-18, citing RJN Exh. G, H.) The court denies judicial notice of the cited materials, a petition and answer from a pending action (the "YIMBY case"), because they are irrelevant to the court's determination of the legal issues presented by this demurrer. Even if considered this material, Petitioners' argument is not persuasive. HCD's litigation decisions in a different case are not a waiver or judicial admission in a separate case. More importantly, "the parties to a case cannot confer fundamental jurisdiction upon a court by waiver, estoppel, consent, or forfeiture. Defects in fundamental jurisdiction therefore 'may be raised at any point in a proceeding, including for the first time on appeal,' or, for that matter, in the context of a collateral attack on a final judgment." (*Quigley v. Garden Valley Fire Protection Dist.* (2019) 7 Cal.5th 798, 807.) Thus, HCD's decision not to demur based on jurisdictional grounds in the YIMBY case, for whatever reason, has no bearing on the instant case.

The court has considered all of Petitioners' opposition arguments and finds them unpersuasive. The demurrers are SUSTAINED for lack of jurisdiction.

Leave to Amend

A demurrer may be sustained without leave to amend when there is no reasonable possibility that the defect can be cured by amendment. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) Courts generally allow at least one time to amend a complaint after sustaining a demurrer. (*McDonald v. Superior Court* (1986) 180 Cal.App.3d 297, 303.) In assessing whether leave to amend should be granted, the burden is on the complainant to show the court that a pleading can be amended successfully. (*Goodman v. Kennedy* (1976) 18 Cal.3d 335, 348-349.)

This is the court's first ruling on the demurrer. However, Petitioners have not requested leave to amend or made an offer of proof of amendments that could address the pleading defects analyzed above. While it appears doubtful Petitioners could amend in a manner to withstand a jurisdictional challenge, counsel may address at the hearing whether leave to amend should be permitted.

Conclusion

The demurrers are SUSTAINED. Counsel may address at the hearing whether leave to amend should be permitted.

PROOF OF SERVICE

Orange County, et al v Velasquez, et al
Case No. 21STCO01970

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 707 Wilshire Blvd., 24th Floor, Los Angeles, CA 90017.

On November 19, 2021, I served true copies of the following document(s) described as **NOTICE OF RULING REGARDING DEMURRERS TO VERIFIED FIRST AMENDED PETITION FOR WRIT OF MANDATE** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY ELECTRONIC TRANSMISSION: I caused a copy of the document(s) to be sent from e-mail address gduran@meyersnave.com to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

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

Executed on November 19, 2021, at Los Angeles, California.

Gabrielle Duran

SERVICE LIST
Orange County, et al v Velasquez, et al
Case No. 21STCO01970

FRED GALANTE, State Bar No. 178421 *fgalante@awattorneys.com* JUNE S. AILIN, State Bar No. 109498 *jailin@awattorneys.com* PAM K. LEE, State Bar No. 246369 *plee@awattorneys.com* ALISON S. FLOWERS, State Bar No. 271309 *aflowers@awattorneys.com* ALESHIRE & WYNDER, LLP 18881 Von Karman Avenue, Suite 1700 Irvine, California 92612 Telephone: (949) 223-1170	Attorneys for Petitioners ORANGE COUNTY COUNCIL OF GOVERNMENTS, a Joint Powers Agency; CITY OF REDONDO BEACH, a California charter city; CITY OF LAKEWOOD, a municipal corporation; CITY OF TORRANCE, a California charter city; CITY OF CERRITOS, a California charter city; CITY OF DOWNEY, a California charter city; CITY OF WHITTIER, a California charter city
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