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13 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
14 FOR THE COUNTY OF LOS ANGELES  
15

16 CALIFORNIA HOUSING DEFENSE FUND, a  
17 California nonprofit public benefit corporation,  
18  
19 Petitioner and Plaintiff,  
20 v.  
21 CITY OF LA CAÑADA FLINTRIDGE,  
22 Respondent and Defendant,  
23  
24 600 FOOTHILL OWNER, LP, a limited  
partnership,  
25  
26 Real Party in Interest.

Case No.: 23STCP02614  
Related Case No.: 23STCP02575

Honorable Stephen I. Gofororvitch  
Department:82

**RESPONDENT CITY OF LA CAÑADA  
FLINTRIDGE'S OPPOSITION TO  
MOTION FOR APPEAL BOND**

Date: November 8, 2024  
Time: 9:30 a.m.  
Dept: 82

[Concurrently filed with Declarations of Peter  
C. Sheridan and Paul Pocalyko and Objections  
to and Motion to Strike the Declaration of  
Jonathan Curtis]

25 PEOPLE OF THE STATE OF CALIFORNIA,  
26 EX REL. ROB BONTA; CALIFORNIA  
DEPARTMENT OF HOUSING AND  
27 COMMUNITY DEVELOPMENT,  
28  
Petitioners-Intervenors.

**[PUBLIC-REDACTED PURSUANT TO  
COURT ORDER ISSUED OCTOBER 8,  
2024]**

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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

California Housing Defense Fund’s (“CHDF”) Motion for an Appeal Bond demanding over \$14 million in security from the City of La Cañada Flintridge (the “City”) in favor of real party 600 Foothill Owner LP (“600 Foothill”) should be denied in its entirety. Cities in California and the State of California are not required to post such bonds under the California Code of Civil Procedure. C.C.P. § 995.220(b) is clear, unambiguous, and impervious to any subsequent general law or statute that purports to require a bond from a city, because it contains what California law construes as a unique and powerful term of art (“notwithstanding any other statute...”). Therefore, even if a later statute provides for a bond in any proceeding, including one pending an appeal by a city, the city is not required to post a bond “and shall have the same rights, remedies, and benefits as if the bond were given.” The HAA never repealed or purported to repeal C.C.P. § 995.220 and this code section controls the permissibility of a bond sought from the City.

As a threshold matter, the HAA on its face only permits an appeal bond to be posted when the plaintiff itself is the project applicant. The above captioned matter is only related, but not consolidated, to the case in which 600 Foothill is the Petitioner. Petitioners in both actions opposed consolidation and there is no unity of judgment here favoring 600 Foothill. (Sheridan Decl. ¶¶ 2-3.) The HAA at Section 65589.5(m)(1) states: “If the local agency appeals the judgment of the trial court, the local agency shall post a bond, in an amount to be determined by the court, to the benefit of the plaintiff if the plaintiff is the project applicant.” (emphasis added.) 600 Foothill is not the plaintiff or petitioner in this case, and CHDF is not the project applicant, and therefore CHDF may not seek a bond as 600 Foothill’s proxy.

In the same vein, the HAA defines what a housing group with limited standing like CHDF may and may not do in litigation and nothing in the HAA authorizes a housing group to seek an appellate bond. Section k of the HAA sets forth a list of what a housing organization may do: “A housing organization may only file an action pursuant to this section to challenge the disapproval... and... shall be entitled to reasonable attorney’s fees and costs if it is the prevailing party.” Nothing authorizes CHDF to seek an appeal bond on behalf of the plaintiff in a related case, particularly when

1 it fought consolidation of the cases (presumably to amplify its own claim for attorneys’ fees).

2 Further, the only real basis offered for the vast amount of the bond sought is the declaration  
3 of Jonathan Curtis, a principal of 600 Foothill, and this declaration is fundamentally flawed. Mr.  
4 Curtis cannot be an “expert” witness for purposes of establishing purported damages because he has  
5 a strong interest in the outcome of the Bond Motion. [REDACTED]

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17 In sum: (i) a bond is not available from the City; (ii) even if it were, CHDF could not seek it;  
18 (iii) the only evidentiary basis for the Bond Motion lacks foundation and its proponent is hopelessly  
19 conflicted; and, (iv) [REDACTED]

20 [REDACTED]

21 **II. ARGUMENT**

22 **A. The City is Not Required to Post a Bond Under C.C.P. Section 995.220.**

23 Code of Civil Procedure section 995.220 “flatly prohibits requiring governmental entities from  
24 furnishing security.” (*City of San Francisco v. Cypress Lawn Cemetery Assn.* (1992) 11 Cal. App. 4th  
25 916, 921.) Section 995.220 states in relevant part as follows: “*Notwithstanding any other statute*, if  
26 a statute provides for a bond in an action or proceeding, including but not limited to a bond for ... stay  
27 of enforcement of judgment on appeal, *[cities] are not required to give the bond and shall have the*  
28 *same rights, remedies, and benefits as if the bond were given...*”

1 This longstanding policy is based upon a broad reliance upon the “public good” that runs  
2 from this statute in favor of both cities and the State, and the addition of “notwithstanding any other  
3 statute...” is a bulwark against errant laws that might run afoul of this declared priority. “Section  
4 995.220 clearly reflects the deliberate conclusion of the Legislature that the public good is best  
5 served by excusing governmental entities from the security requirements otherwise imposed on  
6 litigants.” (*Cypress Lawn*, 11 Cal.App.4<sup>th</sup> at 921.)

7 The HAA cannot require the Court to impose a bond merely because, as CHDF contends, the  
8 HAA uses the term “shall” in connection with its errant bond requirement. (Bond Motion at 5.) CHDF  
9 cites no authority otherwise. The statutory phrase “notwithstanding any other law” is a “term of art”  
10 that “declares the legislative intent to override all contrary law.” (*Klajic v. Castaic Lake Water*  
11 *Agency* (2004) 121 Cal.App.4th 5, p. 13 [internal citations and quotation marks omitted].) “By use of  
12 this term, the Legislature expresses its intent to have the specific statute control despite the existence  
13 of other law which might otherwise govern.” (*Id.*) Section 995.220 provides, “[n]otwithstanding any  
14 other statute,” that cities cannot be required to post a bond on appeal. If that provision conflicts with  
15 HAA Subdivision (m), then section 995.220 with its “notwithstanding” clause prevails.

16 *People v. Encerti* (1982) 130 Cal.App.3d 791, is instructive. In that case, the Court of Appeal  
17 emphasized the rule against implied repeals. (*Encerti*, 130 Cal.App.3d at p. 797.) For a later statute  
18 (such as HAA Subdivision (m)) to repeal an earlier one (*e.g.*, C.C.P. section 995.220(b)), it must  
19 “expressly modify, repeal, or otherwise mention” the earlier enactment. (*Id.*) In this case, Subdivision  
20 (m) does not expressly modify C.C.P. section 995.220(b). It does not expressly repeal the earlier  
21 statute. And it makes no mention of local governments’ immunity from posting appeal bonds, from  
22 which the Court cannot read Subdivision (m) as “expressly” modifying C.C.P. section 995.220(b).  
23 The apparently stray inclusion of authority to order a city to post an appeal bond in Subdivision (m)  
24 could at most be read to implicitly repeal C.C.P. § 995.220(b), but implicit repeal is not recognized.  
25 (*Encerti, supra*, 130 Cal.App.3d at p. 797.) Because Subdivision (m) fails to expressly repeal or even  
26 mention C.C.P. section 995.220(b), the latter prevails.

27 CHDF does not confront this strong body of law in any meaningful way. In barely three pages  
28 of discussion, they emphasize the use of the word “shall,” which carries no talismanic meaning when

1 addressing conflicting laws. (Bond Motion at 5.) Every law that purports something must be done  
2 implies that it “shall” be done as opposed to “may be done.” CHDF’s reliance upon *Rice v. Superior*  
3 *Court (1982)* 136 Cal.App.3d 81, 86, is misplaced because it addresses the use of the term “shall”  
4 within the laws giving preference to litigants over age 70 as opposed to the term “may” that appears  
5 elsewhere in the same statute. *Rice* would only be instructive and support their position if it, for  
6 example, confronted a broad law such as one stating “notwithstanding” any other statute the age of a  
7 litigant is not to be considered or similar language. That is not what *Rice* says. But that is what CHDF  
8 is faced with—a widely observed law containing the heavily loaded words “notwithstanding any other  
9 statute” in conflict with a newer law with limited application. The entire point of Section 995.220 is  
10 to exempt cities from what would otherwise be mandatory (e.g., shall) upon another party. Section  
11 995.220 provides a reason strong and effectual for the Court to deny the Bond Motion entirely.

12 ***A Bond Does Not Further or Provide Housing:*** CHDF emphasizes the importance of housing  
13 and giving the HAA the “fullest possible weight to the interest of, and the approval and provision of,  
14 housing” (nearly tautological for a law called the “Housing Accountability Act”). Yet every law  
15 directed at every societal problem can claim some specialized interest—but this hardly rises to the  
16 broad protection of the “public good” the Legislature addresses in Section 995.220. CHDF simply  
17 contends that the courts should decide without limits even ancillary issues (like a post trial bond) in  
18 favor of developers even if such issues are not tied to the “provision” of housing. CHDF relatedly  
19 suggests that the way to “harmonize” the HAA with Section 995.220 is to create a limited exception  
20 to Section 995.220 for the HAA, but this would render Section 995.220’s use of “notwithstanding”  
21 meaningless because any law could then claim a “limited exception” relevant to its subject matter.  
22 Every law is important to the legislature when passed, but the courts have given special meaning to  
23 the phrase “notwithstanding any other statute” and the proponents of the HAA did not choose to  
24 overturn Section 995.220 or expressly carve out an exception to “further housing.”

25 Further, however strongly the authors of the HAA felt about housing, the bond requirement  
26 itself is of no great relation to the provision of housing (particularly at nearly \$1 million for each of  
27 only 16 affordable units at issue) except as CHDF proposes to deny the City its appeal rights in  
28 favor of the interest of a for-profit developer. For-profit development of expensive apartments and

1 office space and hotel rooms can hardly be said to weigh against the “public good” embodied in  
2 Section 995.220.

3 Moreover, the appeal bond is directed to damages that 600 Foothill may incur in the course of  
4 an appeal. In this case the City has only been directed to process 600 Foothill’s application, subject  
5 to CEQA review, as set forth in Judge Beckloff’s Order of March 4, 2024 that remanded these issues  
6 to the City for processing. A bond does not build housing, it will not speed its creation, it will not  
7 bear upon the merits of the pending appeal, 600 Foothill cannot draw down on it to build housing  
8 during an appeal, and at most it would (in violation of law) deny the City the right to an appeal, which  
9 is not the purpose of a bond. Judge Beckloff was certainly aware of and gave effect to the “fullest  
10 interest” of housing under the HAA at trial and the Court of Appeal will have the final say—a gigantic  
11 bond as sought by CHDF is only a punitive piece of paper waiting for the conclusion of litigation.

12 CHDF then misreads and improperly relies upon federal law in *Oregon Natural Resources*  
13 *Council v. Thomas* (9<sup>th</sup> Cir. 1996) 92 F.3d 792, 797). (Motion at 5.) The court in *Oregon Natural*  
14 *Resources* addressed an obscure law regarding the sale of salvage timber and the term  
15 “notwithstanding any other law” as it conflicted with parts of its own provisions. *Id.* Not only does  
16 federal law not apply here, but California’s Legislature in enacting a broad protection to cities for the  
17 “public good” is not analogous to the review of salvage timber sales under federal law; that case is  
18 entirely inapplicable.

19 ***If harmonization is possible, it only involves the invocation of fines:*** While the City does not  
20 believe that it is possible to harmonize section (m) of the HAA with the immunization from a bond  
21 requirement as set forth in Section 995.220, the only way, if possible, to harmonize Section 995.220  
22 with the bond provision of the HAA is that a bond may only issue if fines were issued by the Court as  
23 illustrated by the legislative history of the HAA and the plain language of the HAA (the legislative  
24 history is described more fully in the Declaration of Peter Sheridan). While section (m) of the HAA  
25 initially provided for an award of actual damages, the legislative process only yielded, in short,  
26 provisions for dollar awards in the form of fines and attorneys’ fees. Because fines and attorneys fees  
27 are the only dollar amounts awardable under the HAA, the only way to potentially reconcile the HAA  
28 with Section 995.220 (which the City does not endorse or believe is fundamentally possible) would

1 be to only require a bond if fines or specific attorneys' fees are awarded. This makes sense because  
2 attorneys' fees are typically subject to a bond requirement and fines are the only other dollar amount  
3 awardable under the HAA. In any event, fines were not imposed in this case, and the City enjoys the  
4 immunity conferred by Section 995.220, so any consideration of "harmonizing" the HAA with Section  
5 995.220 is merely academic.

6 **B. The HAA Only Permits the Plaintiff to Seek a Bond If It Is The Project**  
7 **Applicant (If At All).**

8 CHDF lacks standing under the HAA, or at a minimum basic statutory authority, to seek a  
9 bond in this action because as the Petitioner it is not a "project applicant." The HAA at Section  
10 65589.5(m)(1) states: "If the local agency appeals the judgment of the trial court, the local agency  
11 shall post a bond, in an amount to be determined by the court, to the benefit of the plaintiff *if the*  
12 *plaintiff is the project applicant.*" (emphasis added.) The meaning of this provision is plain: in a case  
13 such as this where the "local agency" appeals the judgment of the trial court, a bond is available only  
14 if the project applicant is the plaintiff. If 600 Foothill had waited until there were a judgment in the  
15 action it filed (and perhaps if it had not opposed consolidation, and if there were not authority  
16 exempting a city from any bond requirement) then it as the petitioner/plaintiff could potentially seek  
17 a bond under the language of this section of the HAA. (Notwithstanding the statutory bar against  
18 forcing a city to post a bond.) Even under the plain terms of the HAA though, without reference to  
19 any other authority, a city is not required to post a bond when the petitioner is another party such as a  
20 public interest group.

21 CHDF attempts to skirt by this issue quickly, citing a 50 year old case, *Venice Canals Resident*  
22 *Home Owners Ass'n v. Superior Ct.* (1977) 72 Cal.App.3d 675, 683, which is of no assistance because  
23 it predates the HAA and relates to judicial discretion with regard to the Coastal Zone Conservation  
24 Act specifically. *Id.* This case is apropos of nothing, and does not have the import that CHDF appears  
25 to believe it does. (Bond Motion at 5.)

26 While this exact point does not appear to have been litigated in a published case as it relates  
27 to the HAA, the standing to do anything in a writ action is circumscribed by the limits of the  
28 authorizing statute. "As a general rule, legal standing to petition for a writ of mandate requires the

1 petitioner to have a beneficial interest in the writ’s issuance.” (*Regency Outdoor Advertising, Inc. v.*  
2 *City of West Hollywood* (2007) 153 Cal.App.4th 825, 829, 63). While CHDF has standing to bring a  
3 suit as a housing group, the HAA defines what it may and may not do within an action, and the HAA  
4 does not provide a housing group with the right to seek an appeal bond as the plaintiff or petitioner.  
5 Section k of the HAA sets forth the limits of what a housing organization may do: “A housing  
6 organization may only file an action pursuant to this section to challenge the disapproval... and...  
7 shall be entitled to reasonable attorney’s fees and costs if it is the prevailing party.”

8 In sum, there is currently no judgment in the 600 Foothill case. Indeed, CHDF resisted efforts  
9 to consolidate this with the first filed case and in part because of this 600 Foothill is only the real party  
10 in interest in this case—all of which means that no appeal bond may be sought in this action.

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DATED: October 28, 2024

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Attorneys for Respondent and Defendant  
*City of La Cañada Flintridge*

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**PROOF OF SERVICE**

**STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

I am employed in the County of Los Angeles, State of California; I am over the age of 18 and not a party to the within action; my business address is 10250 Constellation Boulevard, 19th Floor, Los Angeles, California 90067.

On October 28, 2024, I served the foregoing document(s) described as **RESPONDENT CITY OF LA CAÑADA FLINTRIDGE’S OPPOSITION TO MOTION FOR BOND; DECLARATION OF PETER C. SHERIDAN** on the interested parties to this action by:

SEE ATTACHED LIST

- (BY E-MAIL SERVICE)** I caused such document to be delivered electronically via e-mail to the e-mail address of the addressee(s) set forth in the attached service list.
- (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on October 28, 2024 at Los Angeles, California.

*Marisol Valdez*  
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Marisol Valdez

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