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11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF LOS ANGELES

14 CALIFORNIA HOUSING DEFENSE
FUND, a California nonprofit public
15 benefit corporation,

16 Petitioner and Plaintiff,

17 v.

18 CITY OF LA CAÑADA FLINTRIDGE,

19 Respondent and Defendant,

20 600 FOOTHILL OWNER, LP, a limited
21 partnership,

22 Real Party in Interest,

23 PEOPLE OF THE STATE OF
CALIFORNIA, EX REL. ROB BONTA;
24 CALIFORNIA DEPARTMENT OF
HOUSING AND COMMUNITY
25 DEVELOPMENT,

26 Petitioners-Intervenors.

Case No. 23STCP02614
Related Case No. 23STCP02575

**PETITIONER CALIFORNIA
HOUSING DEFENSE FUND'S
OBJECTIONS TO RESPONDENT'S
CEQA STATEMENT AND REQUEST
FOR ORDER TO SHOW CAUSE**

Judge: Hon. Stephen I. Goorvitch
Dept: 82
Hearing Date: TBA

Trial Date: March 1, 2024
Action Filed: July 25, 2023

1 Pursuant to paragraph 3(b) of the Judgment in this case entered on April 5, 2024,
2 Petitioner California Housing Defense Fund (“CalHDF” or “Petitioner”) hereby submits the
3 following Objections to the Statement filed April 7, 2025 by Respondent City of La Cañada
4 Flintridge (“City”). Petitioner objects to the City’s failure to comply with Paragraph (3) of the
5 Judgment and requests that this Court (1) order the City to comply with Paragraph (3) within
6 30 days, and (2) issue an Order to Show Cause why the City should not be required to pay
7 statutory penalties pursuant to subdivision (k) of the Housing Accountability Act (“HAA”).

8 **FACTUAL BACKGROUND**

9 CalHDF filed this case on July 25, 2023, alleging that the City violated the HAA when
10 it disapproved Real Party in Interest 600 Foothill Owner LP’s application to build a modest,
11 five-story apartment building (“Project”). (See Verified Petition for Writ of Mandate and
12 Complaint for Declaratory Relief, filed July 25, 2023.) The Court overruled the City’s
13 demurrer and denied its motion to strike in November 2023, granted Petitioner’s and
14 Petitioners-Intervenors’ respective petitions for writ of mandate in March 2024, and entered a
15 final judgment in favor of Petitioner and Petitioners-Intervenors on April 5, 2024. (See Order
16 Overruling Demurrer and Denying Motion to Strike, filed November 22, 2023; Order on
17 Petitions for Writ of Mandate and Complaints for Declaratory Relief, filed March 4, 2024;
18 Judgment, filed April 5, 2024.) The City appealed the Judgment on April 11, 2024, and
19 subsequently dismissed its appeal after this Court ordered a \$14 million appellate bond. (See
20 Notice of Appeal, filed April 11, 2024; Order, filed Feb. 28, 2025.)

21 From the start of this litigation, the City insisted that CalHDF’s claims were
22 “premature” because the City had not yet completed an Environmental Impact Report (EIR)
23 pursuant to the California Environmental Quality Act (CEQA). (See, e.g., Demurrer, filed
24 August 29, 2023, at pp. 10-11; Mot. to Strike, filed August 28, 2023, at pp. 10-12; Answer to
25 CalHDF’s Opening Brief, filed Feb. 5, 2024, at pp. 17-18.) According to the City, its own
26 refusal to move forward with an EIR precluded the Court from granting either of the two
27 primary remedies authorized by the HAA: (1) an order requiring the City to reconsider 600
28 Foothill’s application and make the necessary findings in support of the City’s approval,

1 disapproval, or conditional approval of the Project, or (2) an order requiring the City to
2 approve the Project. (See Gov. Code, § 65589.5(k)(1)(A)(ii).)

3 The Court rejected the City’s CEQA arguments twice—first at the demurrer phase of
4 the litigation and again when it granted CalHDF’s petition. (See Order Overruling Demurrer
5 and Denying Motion to Strike, filed Nov. 22, 2023 [Demurrer Order], at pp. 3-4; Order on
6 Petitions for Writ of Mandate and Complaints for Declaratory Relief, filed March 4, 2024
7 [Merits Order], at pp. 13-15.) As the Court explained, “[n]othing suggests a disapproval under
8 the HAA can occur only after CEQA review,” and the City provided no evidence or argument
9 to support its bare assertions that the Court “could not issue an order on Petitioner’s HAA
10 claims that avoids a conflict with CEQA.” (Demurrer Order at p. 3; Merits Order at p. 14.)
11 The Court invited feedback from the parties about how its remedial orders could harmonize the
12 HAA with CEQA, including proposed language that would mandate compliance with the HAA
13 and ensure that future “CEQA review [is] ‘narrowly tailored in relation to the City’s discretion,
14 and quickly completed, to ensure that Respondents do not abuse the CEQA process.” (See
15 Decl. of Alexander Gourse ISO Notice of Lodging Proposed Judgment, filed April 3, 2024, ¶ 3
16 and Ex. A at p. 28.)

17 CalHDF responded by proposing that the Court retain jurisdiction to oversee a
18 structured remedial process. (See Decl. of Alexander Gourse ISO Notice of Lodging Proposed
19 Judgment, filed April 3, 2024.) Under this remedial process, the City would first identify (1)
20 what environmental review it believes CEQA requires in this case, and (2) the deadline for
21 completing that review under CEQA and its implementing regulations. The Court approved
22 CalHDF’s proposal over the City’s strenuous objections, and outlined the initial steps of the
23 remedial process in the Judgment entered on April 5, 2024.

24 The City appealed the Judgment and then dismissed its appeal in March 2025, shortly
25 after this Court ordered a \$14 million appellate bond. On April 7, 2025, the City filed a
26 Statement in response to paragraph 3 of the Judgment, which required the City to file and serve
27 within 45 days “a Statement identifying the additional [CEQA] review believed to be required
28 and the applicable deadline(s) for completing that review” under CEQA and its implementing

1 regulations. (See Judgment, ¶ 3; City’s Statement, filed April 7, 2025.) In its Statement, the
2 City maintains it cannot identify either the type of CEQA review it “believe[s] to be required”
3 or “the applicable deadline(s) for completing that review” because 600 Foothill has refused to
4 comply with the City’s demand for approximately \$300,000 in exchange for an “Initial Study”
5 of whether a full EIR is required in this case. (See City’s Statement, filed April 7, 2025, at p.
6 7; Decl. of Peter Sheridan ISO City’s Statement, filed April 7, 2025, ¶ 16.)

7 CalHDF hereby objects to the City’s Statement because it does not comply with the
8 Judgment and because it indicates the City is engaged in an ongoing violation of subdivision
9 (o)(1) of the HAA. In light of these objections, CalHDF requests that the Court: (1) order the
10 the City to comply with paragraph (3) of the Judgment within 30 days, and (2) issue an order to
11 show cause why the Court should not impose non-compliance fines on the City pursuant to
12 subdivision (k)(1)(B) of the HAA.

13 ARGUMENT

14 I. THIS COURT RETAINED JURISDICTION IN PART TO ENSURE THE CITY 15 DOES NOT ENGAGE IN CEQA ABUSE ON REMAND.

16 “CEQA was meant to serve noble purposes, but it can be manipulated to be a
17 formidable tool of obstruction, particularly against proposed projects that will increase housing
18 density.” (*Tiburon Open Space Committee v. County of Marin* (2022) 78 Cal.App.5th 700,
19 782.) Private lawsuits claiming a city’s environmental review is inadequate can, of course,
20 delay projects for the duration of the litigation. But private lawsuits are not the only type of
21 CEQA abuse that interferes with housing development in California. Cities frequently use
22 CEQA to delay a final decision on politically controversial project applications when it is
23 likely a formal disapproval would violate the HAA. By demanding that housing developers
24 fund excessive and prolonged environmental studies that are not actually necessary to comply
25 with CEQA, cities can drive up the cost of development and kill projects through delay—and
26 potentially evade judicial review under the HAA to boot. (See generally Christopher S.
27 Elmendorf & Timothy G. Duncheon, *When Super Statutes Collide: CEQA, the Housing*
28 *Accountability Act, and Tectonic Change in Land Use Law* (2022) 49 Ecol. L.Q. 655, 677-85

1 [describing the problem of “CEQA-laundered project denials” evading judicial review].)

2 The Court expressly retained jurisdiction in this case to ensure the City does not engage
3 in similarly abusive tactics on remand. As the Court explained, its intent in entering the April
4 5, 2024 Judgment was ensure that the City processes 600 Foothill’s builder’s remedy
5 application in compliance with the HAA; that the City “narrowly tailor[s]” any further
6 environmental review so that it corresponds to the highly limited discretion the City retains on
7 remand; and that it completes this narrowly tailored review within the deadlines in CEQA and
8 its implementing regulations. (See Gourse Decl. ISO Proposed Judgment, filed April 3, 2024,
9 ¶ 3 and Ex. A at p. 28; Judgment, filed April 5, 2024, ¶ 3.)

10 **II. THE CITY’S APRIL 7, 2025 STATEMENT DOES NOT COMPLY WITH THE**
11 **JUDGMENT.**

12 The City’s April 7 Statement is inconsistent both with the spirit and the letter of the
13 Court’s Judgement. Instead of identifying the type of CEQA review it “believe[s] to be
14 required” in this case and “the applicable deadline(s) for completing that review” (Judgment
15 ¶ 3), the City blames 600 Foothill for the City’s own ongoing inaction. The Judgment set a 45-
16 day deadline for the City to submit this Statement, which was intended to coincide with the
17 City’s own statutory deadline to complete the “initial study” it now claims 600 Foothill failed
18 to prepare. (See Pub. Res. Code, §§ 21080.1(a) [determination of necessary environmental
19 review is lead agency’s responsibility], 21080.2 [determination to be made within 30 days].)
20 The City provides no evidence whatsoever that it took any action at all to complete the initial
21 study it claims is necessary to comply with the Judgment. Instead, the City attempts to distract
22 the Court by recounting in detail its longstanding disagreement with 600 Foothill regarding the
23 Project’s eligibility for one or more CEQA exemptions. That disagreement does not excuse
24 the City from complying with its statutory duty, as the lead agency under CEQA, to
25 “determin[e] whether an environmental impact report, a negative declaration, or a mitigated
26 negative declaration shall be required.” (*Id.*, § 21080.1(a).) Nor does it excuse the City from
27 complying with paragraph (3) of the Judgment in this case.

28 The City suggests that its non-compliance with the Judgment should be excused

1 because, almost ten months ago, 600 Foothill notified the City that it would not comply with
2 the City’ demand for approximately \$300,000 before it would even begin work on an initial
3 study. (See Statement at p. 5; Sheridan Decl. ISO Statement ¶¶ 16-24.) But the only legal
4 authority the City cites to justify this extortionate demand is a resolution the City Council
5 adopted on May 7, 2024. (See Sheridan Decl. ¶¶ 21-22.) As Petitioner-Intervenor California
6 Department of Housing and Community Development has already explained to the City, this
7 May 7 Resolution was adopted long after 600 Foothill submitted a complete preliminary
8 application for the Project, and therefore cannot provide a basis for demanding a \$300,000 fee
9 in exchange for an initial study to determine whether CEQA requires a full EIR under the
10 circumstances of this case. (See Sheridan Decl. ¶ 25 & Ex. W; see also Gov. Code, §§
11 65589.5(o)(1), 65941.1.) In fact, because the City had not adopted any ordinance, policy, or
12 standard requiring payment of such a fee at the time 600 Foothill submitted its preliminary
13 builder’s remedy application, the City’s repeated demands that 600 Foothill pay the fee are
14 evidence of another ongoing, actionable violation of the HAA—independent of the violation
15 that gave rise to the Judgment in the first place. (See *id.*, § 65589.5(k))(1)(A)(i)(III)
16 [authorizing private actions to enforce the prohibition in subdivision (o)(1)].)

17 The HAA provides specific remedies where a municipality fails to comply with a
18 court’s remedial orders. Pursuant to subdivision (k), upon a finding of non-compliance “the
19 court shall impose fines...in a minimum amount of ten thousand dollars (\$10,000) per housing
20 unit in the housing development project” at issue in the litigation. (Gov. Code, §
21 65589.5(k)(1)(B).) The Court also “may issue further orders ... to ensure that the purposes
22 and policies of [the HAA] are fulfilled, including, but not limited to ... [an order] to approve
23 the housing development project.” (*Id.*, § 65589.5(k)(1)(C); see also Code Civ. Proc. § 1097
24 [authorizing “any orders necessary and proper for the complete enforcement of the writ”].) In
25 light of the City’s April 7 Statement, this Court should order the City to file and serve within
26 30 days a revised Statement that complies with paragraph (3) of the Judgment. The Court
27 should also issue an Order to Show Cause and a schedule for further briefing on whether the
28 City’s ongoing inaction and/or its demand for a \$300,000 initial-study fee justify the

1 imposition of fines pursuant to subdivision (k)(1)(B) of the HAA. (See Gov. Code, §
2 65589.5(k)(1)(B).)

3 **CONCLUSION**

4 This Court should reject the City’s request for a 210-day continuance because the City
5 has not even tried to comply with the Judgment. To remedy the City’s non-compliance, the
6 Court should order the City to file and serve within 30 days a Statement that complies with
7 paragraph (3) of the Judgment. The Court should also issue an Order to Show Cause and order
8 further briefing on whether statutory non-compliance penalties are warranted under
9 Government Code section 65589.5(k)(1)(B).

10
11 DATED: April 21, 2025

Respectfully submitted,

12 ROSEN BIEN GALVAN & GRUNFELD LLP

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14 By: /s/ Alexander Gourse
15 Alexander Gourse

16 Attorneys for Petitioner and Plaintiff
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PROOF OF SERVICE

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 San Francisco, State of California. My business address is 101 Mission Street, Sixth Floor, San Francisco, CA 94105-1738.

On April 21, 2025, along with an *unsigned* copy of this proof of service, I served true copies of the following document(s) described as:

PETITIONER CALIFORNIA HOUSING DEFENSE FUND’S OBJECTIONS TO RESPONDENT’S CEQA STATEMENT AND REQUEST FOR ORDER TO SHOW CAUSE

on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused a copy of the document(s) to be sent from e-mail address glapurja@rbgg.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 April 21, 2025, at Fairfield, California.

Frances Gail LaPurja

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3 **Case No. 23STCP02614**

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