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City of La Cañada Flintridge

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 FOR THE COUNTY OF LOS ANGELES

15 CALIFORNIA HOUSING DEFENSE FUND, a
California nonprofit public 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,
24 EX REL. ROB BONTA; CALIFORNIA
DEPARTMENT OF HOUSING AND
25 COMMUNITY DEVELOPMENT,

26 Petitioners-Intervenors.

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

Honorable Stephen I. Goorvitch
Department: 82

**CITY OF LA CANADA FLINTRIDGE'S
RESPONSE TO 600 FOOTHILL
OWNER'S AND CHDF's "OBJECTIONS"
TO THE CITY'S APRIL 7, 2024
STATEMENT OF COMPLIANCE WITH
WRIT AND JUDGMENT**

Dept: 82
Action Filed: July 25, 2023

1 **I. Introduction**

2 The City of La Cañada Flintridge (“City”) files this preliminary response in each of the
3 related actions only in order to provide the Court with an initial set of reasons why the Court should
4 do as the City has requested and provide the additional time for environmental review, and why the
5 Court should take no action on the 600 Foothill and CHDF request, at all or, at a minimum, without
6 properly noticed motion given the mischaracterizations of the factual record and the (wrongly) cited
7 law relied on by both of those parties.

8 600 Foothill and CHDF’s strained “objections” are simply an inappropriate response to the
9 City’s Statement in Compliance with Judgment and Writ and give the Court no basis to issue any of
10 the relief requested therein.

11 **II. The City’s Response to 600 Foothill’s “Objection” and CHDF’s “Objections to**
12 **Respondent’s CEQA Statement and Request for an Order to Show Cause.”**

13 A few of the more obvious misstatements by CHDF and 600 Foothill need response.

14 The “EIR” Misstatements. CHDF (and 600 Foothill) are entirely wrong that the City alleged
15 during the pendency of the case that such was premature because 600 Foothill had not completed an
16 “EIR.” In every relevant submission, the City argued that 600 Foothill’s case was premature
17 because it had not even *begun* the CEQA process in any way whatsoever. (See, e.g., Demurrer 10-
18 11; the City’s Motion to Strike at 10-12; the City’s Answer to Opening Brief 17-18). Rather, as set
19 forth in the City’s Submission to the Court at page 3 (filed April 7, 2015) the City stated that it must
20 both engage in further processing pursuant to the Subdivision Map Application by 600 Foothill and
21 any CEQA review (whether such review involves an EIR or not). These references all address the
22 general CEQA process, and in no way suggest that an EIR was mandated or deemed necessary at
23 any point before or during litigation or as yet. This same canard permeates all of the filings at issue
24 and appears to be only geared toward preventing a determination whether an EIR is even
25 necessary—but that is not how CEQA works. As Petitioners well know, the City has a statutory
26 duty to “determine[e] whether an environmental impact report, a negative declaration, or a mitigated
27 negative declaration shall be required.” Pub. Res. Code § 21080.1(a). This is the reason for an
28 Initial Study – to determine what is required. (14 California Code of Regulations, section 15063(a).)

1 600 Foothill knew that when in July 2024, it told the City to imminently expect to receive its
 2 consultant’s “Initial Study,” which never materialized.

3 The “Delay” Misstatements. The delay in the CEQA process has been caused by 600
 4 Foothill, which is hardly a mysterious process to a former Planning Commissioner, City Council
 5 member, and self-professed expert in real estate and land use like Mr. Curtis (at least as set forth in
 6 connection with his expertise for developing the Project in connection with the Motion for an
 7 Appeal Bond). Specifically, the delay was because of 600 Foothill’s stated position in open court
 8 that it was simply “too risky” to spend the money to begin the CEQA process while litigation was
 9 pending.

10 The “\$300,000 Deposit” Misstatements. CHDF contends the only cited basis for requiring
 11 the \$300,000 deposit for the City’s CEQA consultant is the May 7, 2023 Resolution of the City
 12 Council. Not so. 600 Foothill continues to argue that \$300,000 is excessive as a deposit on the
 13 Initial Survey, but just last July 600 Foothill stated that “we will send in an initial survey by CAJA”
 14 but that has still not been submitted to the City. The approximately \$300,000 at issue is not a
 15 payment for an Initial Study. This is a normal deposit for the entire CEQA process and assumes an
 16 EIR for purposes of planning but there has been no determination that an EIR is necessary. (E.g.,
 17 Sheridan Decl., para. 14 and Exhibit L.) The City provided the Court with ample and at this
 18 juncture undisputed evidence that the City in Resolutions adopted before 600 Foothill’s initial
 19 application required the deposit of these fees. (Sheridan Decl., paras. 24 and 26 and Exhibits U, V
 20 and X.) There are only so many ways to convey this to 600 Foothill and CHDF, but their narrative
 21 appears to be merely an extension of their effort to convince the Court to commit error and
 22 predetermine the CEQA process. And, pursuant to last week’s letter sent by 600 Foothill’s counsel,
 23 600 Foothill’s “Exemption Application” will be submitted shortly (maybe in less than the same year
 24 period that has transpired since they said the Initial Study by their consultant would be submitted,
 25 imminently).

26 The Misstatement of The Law Regarding the “Stay” In Effect Once The City Filed its
 27 Appeal. Both CHDF and 600 Foothill ignore the fundamental rule of CCP section 916:

28 (a) Except as provided in Sections 917.1 to 917.9, inclusive, and in Section

1 116.810, the perfecting of an appeal stays proceedings in the trial court upon the
 2 judgment or order appealed from or upon the matters embraced therein or affected
 3 thereby, including enforcement of the judgment or order, but the trial court may
 4 proceed upon any other matter embraced in the action and not affected by the
 5 judgment or order.

6 CHDF and 600 Foothill do not rely on any of the provisions of sections 917.1 through 917.9. Thus,
 7 by law, the City’s Appeal stayed the Judgment. 600 Foothill also ignores that the Judgment entered
 8 in April 2024 was in favor of CHDF only and not as to 600 Foothill or its action. 600 Foothill has
 9 no standing to make any protest. CHDF cannot avail itself of the provisions of CCP 918, in any
 10 event. Code of Civ. Proc. § 918 reads in full:

11 (a) Subject to subdivision (b), the trial court may stay the enforcement of any
 12 judgment or order.

13 (b) If the enforcement of the judgment or order would be stayed on appeal only by
 14 the giving of an undertaking, a trial court shall not have power, without the
 15 consent of the adverse party, to stay the enforcement thereof pursuant to this
 16 section for a period which extends for more than 10 days beyond the last date on
 17 which a notice of appeal could be filed.

18 (c) This section applies whether or not an appeal will be taken from the judgment
 19 or order and whether or not a notice of appeal has been filed.

20 By its very terms, section 918 only deals with discretionary stays entered by the trial court, and
 21 limits a court’s power to stay enforcement of a judgment, where a bond for any appeal is required,
 22 for the duration of the period within which to file an appeal PLUS 10 days. This provision has
 23 nothing whatsoever to do with the circumstances here. Moreover, and **even if** 918(b) was read alone
 24 as Petitioners suggest, and **even if** section 916 didn’t say what it says, the HAA says nothing about
 25 “staying” the Judgment “only by the giving of an undertaking” – it merely says that if an appeal is
 26 taken, the City must post a bond in the amount determined by the Court – which determination
 27 requires the beneficiary of such a bond to bring the motion in the first instance. Accordingly, even
 28 if 918 applied (which it does not), the intersection of these two sections of the Code creates a simple

1 rule – a City’s appeal of a Writ under the HAA stays the effect of the writ and judgment until and
2 unless an appeal bond is issued by the Court after motion of the beneficiary, and the Court can only
3 stay that judgment for ten days beyond the due date for the notice of appeal. The length of that stay
4 in this case is entirely a creature of CHDF’s dogged pursuit of an ever larger appellate bond and
5 they reserved the date for the hearing of their initial Motion for an Appeal Bond past the time for an
6 appeal and did not even file their motion seeking a bond until June 2024. 600 Foothill participated
7 in this process not least by providing the Declaration of Jonathan Curtis in support of the Motion for
8 an Appeal Bond and consented by their participation in such a motion at a date past what they now
9 think the City should have somehow made up a bond amount and posted it without any guidance
10 from the Court or factual foundation provided by the beneficiary of the bond, namely the
11 “potentially damaged” 600 Foothill.

12 The “City Took No Action” Misstatement. CHDF’s Judgment only mandates that the City
13 process 600 Foothill’s Application in compliance with the HAA and all applicable state law (which
14 of course necessarily includes CEQA). Further, the City was required to file with the Court in its
15 Statement a description of the steps it had taken to comply with the Judgment on the Writ. The City
16 did exactly this after it dismissed its appeal in the CHDF matter and after the Judgment became
17 “live” again. CHDF at page 5 (and throughout) claims falsely that the City presented no evidence of
18 action it took to comply with the Judgment—literally ignoring the entire report and Exhibits A
19 through Z describing the activity taken by the City. And contrary to CHDF’s opinions, there is no
20 waiver of the Initial Study fee under the HAA and CEQA is expressly preserved in the HAA
21 notwithstanding the seemingly bi-annual changes to its provisions. Despite unsupported hyperbole
22 from Petitioners, the City does not claim that it is excused from compliance with the Judgment,
23 rather, the City has complied with the Judgment, filed its required report with evidence, and will
24 process the Project Application in accordance with the law. It followed its preexisting rules. It
25 submitted its rates as Exhibits to its filing with the Court. Under the relevant statutes, the City can
26 set the fees it charges. The cause of all of this *agitas* is 600 Foothill’s refusal to tender the same type
27 of deposit that any other project applicant would be required to pay to follow the CEQA process.

28 Misstatements Regarding the Requested “Relief.” At page 6 of CHDF’s brief, they

1 mischaracterize the relief that they are entitled to, which requested relief is not appropriate, in large
2 part because they misstate again the facts set forth regarding the City’s responsibilities under CEQA
3 and its rights under relevant statutes. First, CHDF is entirely wrong that the Project should be
4 declared exempt from CEQA by the Court because the Court ordered the Project processed in
5 accordance with the HAA and state law. CHDF is asking the Court to expand upon the relief
6 granted by Judge Beckloff and essentially overrule his Judgment on the Writ. 600 Foothill repeats
7 this mistake in its nearly duplicative request for relief. Second, the sections of the HAA cited at
8 page 6 of CHDF’s Motion are too convoluted to fully address in this brief response. The fines
9 sought are outrageous and not supported by the required predicate facts at all—particularly where,
10 as here, as a matter of gamesmanship 600 Foothill and CHDF attempt to induce the Court into
11 ordering that the City not comply with CEQA (something preserved by Judge Beckloff in his
12 Order). Petitioners’ demand that the Court order the City to “Approve” the Project now, regardless
13 of the status of CEQA review, is as astonishing as it is unsupported by the facts – even CHDF can
14 read the HAA, as did Judge Beckloff, and observe that it requires a predicate finding that Judge
15 Beckloff said was not supported by Petitioners’ evidence -- namely, that the City acted with bad
16 faith when it disapproved the project. (Govt. Code section 65589.5(k)(1)(a)(ii) (“The court may
17 issue an order or judgment directing the local agency to approve the housing development project or
18 emergency shelter if the court finds that the local agency acted in bad faith when it disapproved or
19 conditionally approved the housing development or emergency shelter in violation of this section”).)

20 Misstatements Regarding CEQA “Timing.” 600 Foothill’s demands related to timing of the
21 City’s CEQA environmental review fail to acknowledge the fact that the City, as lead agency is
22 obligated to comply with all of CEQA’s requirements. The City has repeatedly attempted to move
23 forward with the environmental review of the proposed project only to be stymied by the Petitioner,
24 as explained in detail in the City’s Statement. The City cannot cover the cost of the environmental
25 review of Petitioner’s project (as 600 Foothill likewise demands) as that would constitute a gift of
26 public funds, prohibited by law. (Cal. Const. art. XVI, § 6; An appropriation benefiting a private
27 party constitutes an unconstitutional gift of public funds if the public agency receives no
28 consideration in exchange for the expenditure (Allen v Hussey (1950) 101 CA2d 457, 473)) And

1 yet Petitioner refuses to provide any sort of deposit to cover the City’s costs related to the
2 preparation of the environmental clearance for this project. Furthermore, Petitioner has now
3 unilaterally decided that it will prepare the environmental analysis for the project. This is contrary
4 to CEQA as the determination as to who prepares the environmental analysis is left to the sole
5 discretion of the City as the lead agency. (Pub. Res. Code § 21082.1(a): “A draft environmental
6 impact report, environmental impact report, negative declaration, or mitigated negative declaration
7 prepared pursuant to the requirements of this division [CEQA] shall be prepared directly by, or
8 under contract to, a public agency” ; 14 Cal. Code Reg. § 735.5(b)(2): private entities are
9 responsible for paying all fees.”) In summary, any CEQA determination or approval made by the
10 City must comply with the substantive and procedural requirements of CEQA and also be supported
11 with substantial evidence. Therefore, the City cannot be held to arbitrary deadlines to complete the
12 CEQA review for this project, especially since the Petitioner has refused to cooperate with the City
13 to complete the CEQA review of this project in a manner consistent with the City’s custom and
14 practice.

15 Misstatements Regarding the “Chronology” of Facts Here. The long chronology set forth at
16 pages 2-3 of 600 Foothill’s “Objection” is undermined by the facts and 600 Foothill’s own delay as
17 set forth in the City’s April 7, 2025 Submission to the Court. (See Statement, Sheridan
18 Declaration.) An enforceable judgment is the end of a long process that 600 Foothill simply wants
19 to blame the City for “delaying,” yet the City was engaging in the adversarial process that 600
20 Foothill mischaracterizes as “bad faith,” a phrase so oft repeated by 600 Foothill without supporting
21 evidence that it has lost all meaning. There has been no finding of “bad faith” by the City that could
22 justify relief of any kind; indeed, the Court has done the opposite and ruled that CHDF (and 600
23 Foothill) did not prove “bad faith.”

24 **III. Conclusion**

25 Once again, Petitioners seek relief without supporting evidence, seek orders the Court is not
26 at liberty to enter, and otherwise ignore the vast factual showing in the City’s April 7 Statement of
27 Compliance. In sum, the Court should grant the City the time it needs to comply with CEQA and
28 not leap-frog over that “Super-Statute” (using the phrase used in petitioner’s oft-cited law review

1 article) and commit error along the way.

2 DATED: April 25, 2025

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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 April 25, 2025, I served the foregoing document(s) described as **CITY OF LA CANADA FLINTRIDGE’S RESPONSE TO 600 FOOTHILL OWNER’S AND CHDF’s “OBJECTIONS” TO THE CITY’S APRIL 7, 2024 STATEMENT OF COMPLIANCE WITH WRIT AND JUDGMENT** 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.
- (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made. I declare under penalty of perjury that the above is true and correct.

Executed on April 25, 2025, at Los Angeles, California.

/s/ Lara Fox
Lara Fox

Glaser Weil

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