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7 600 FOOTHILL OWNER, LP, a limited partnership

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **COUNTY OF LOS ANGELES CENTRAL**

10
11 CALIFORNIA HOUSING DEFENSE FUND,
a California nonprofit public benefit
12 corporation,

13 Petitioner and Plaintiff,

14 v.

15 CITY OF LA CAÑADA FLINTRIDGE,

16 Respondent and Defendant.

17 600 FOOTHILL OWNER, L.P., a limited
partnership,

18 Real Party in Interest.

19 PEOPLE OF THE STATE OF CALIFORNIA,
20 EX REL. ROB BONTA; CALIFORNIA
DEPARTMENT OF HOUSING AND
21 COMMUNITY DEVELOPMENT,

22 Petitioners-Intervenors

Case No. 23STCP02614
Related Case No. 23STCP02575

**NOTICE OF MOTION AND MOTION
TO RECOVER DAMAGES FOR CITY
OF LA CAÑADA FLINTRIDGE'S
FAILURE TO COMPLY WITH
HOUSING ACCOUNTABILITY ACT
APPEAL BOND REQUIREMENT**

Judge: Hon. Stephen I. Goorvitch

Dept: 82

Date: October 17, 2025

Time: 9:30 a.m.

Date Action Filed: July 25, 2023

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TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD

PLEASE TAKE NOTICE THAT on October 17, 2025, at 9:30 a.m., or as soon thereafter as counsel may be heard, in Department 82 of the Los Angeles County Superior Court located at 111 North Hill Street, Los Angeles, California, Real Party in Interest 600 FOOTHILL OWNER, LP ("600 Foothill Owner") will, and hereby does, move the Court for an order approving an award of damages to 600 Foothill Owner in the amount of **\$6,386,301.37** against the City of La Cañada Flintridge (the "City").

The grounds for this motion are:

- This court has already adjudicated the issues presented by this motion, finding that a 24-month litigation delay would damage 600 Foothill Owner \$14,000,000, and setting the mandated bond for the City at that amount.
- The Housing Accountability Act ("HAA") mandates that a local agency appealing a judgment under the HAA must post a bond (an "HAA appeal bond"). (Gov. Code, § 65589.5, subd. (m).)
- The City appealed the judgment in this action (the "Judgment") and maintained the appeal for 333 days without ever posting an HAA appeal bond.
- The City failed to comply with the Writ of Mandate and its mandatory duty to process 600 Foothill Owner's project at issue in this action (the "Project") while the City's appeal of the Judgment was pending, notwithstanding the City never posting an HAA appeal bond.
- 600 Foothill Owner has been damaged by the City's failure to perform its mandatory duties under the HAA and the Judgment.
- The City's failure to comply with the HAA and the Judgment has effected a temporary taking of 600 Foothill Owner's property at issue in this action (the "Property") for which just compensation is required pursuant to the Constitutions of the State of California and the United States of America.

This motion is based on this notice and motion, the accompanying memorandum of points and authorities in support thereof, the declaration of Alexander M. DeGood filed concurrently

1 herewith, all filed pleadings and papers on file in this action, and such arguments of counsel as
2 may be presented at hearing on the motion.

3
4 DATED: August 27, 2025

Respectfully submitted,

5 COX, CASTLE & NICHOLSON LLP

6 By: /s/ Alexander M. DeGood

Alexander M. DeGood

7 Robert R. Begland

8 Eric J. Cohn

Attorneys for Real Party In Interest 600

9 FOOTHILL OWNER, LP

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 The Housing Accountability Act (“HAA”) provides that “[i]f the local agency appeals the
4 judgment of the trial court, the local agency *shall* post a bond[.]” (Gov. Code, § 66589.5, subd.
5 (m)(1), emphasis added.) The Legislature added this mandatory appeal bond requirement to
6 prevent the harms that often occur when developers, simply enforcing their rights under the HAA,
7 are damaged by the passage of time it takes to secure judicial relief and in turn develop their
8 projects. (*See* Petitioner’s Request for Judicial Notice in Support of Motion for Appeal Bond,
9 filed June 17, 2024, Exh. A [Assembly Floor Analysis issued on August 18, 2005, for purposes of
10 the Assembly’s final vote on Senate Bill (“SB”) 575, which added the appeal bond requirement to
11 the HAA].) This is precisely what transpired here for Real Party in Interest 600 Foothill Owner
12 LP (“600 Foothill Owner”). Instead of allowing 600 Foothill Owner’s housing development
13 project (the “Project”) to move forward as required by the Court’s judgment and peremptory writ
14 of administrative mandate issued in this action, the City of La Cañada Flintridge (“City”) delayed
15 the Project for nearly one (additional¹) year on the belief that filing an appeal, even absent from
16 filing an HAA appeal bond, excused it from processing the Project.

17 However, the HAA expressly mandated that the City must post an appeal bond when it
18 filed its appeal and further delayed the Project (and caused precisely the type of damage to 600
19 Foothill Owner that the appeal bond requirement was designed to prevent). Nowhere does the
20 HAA countenance refusing to post the appeal bond while maintaining an appeal for nearly one
21 year—forcing the parties to brief the appeal, suffer delay, and absorb the resulting damages—
22 only to abandon the appeal at the last minute. The HAA was designed precisely to prevent this
23 kind of harm, and under its terms, the City must now be held accountable and required to
24 compensate 600 Foothill Owner for the damages caused by its unlawful delay. To hold otherwise
25 would make a mockery of the statute and its purpose.

26 _____
27 ¹ Moreover, as the Court determined, well before the Judgment and the Writ, the law required the
28 City to process the Project, filed with the City on November 10, 2022, forward. (*See* Court’s
April 5, 2024 Judgment.)

1 Nor can there be any dispute about the extent of damages here, as the Court already
2 determined that the damages calculation set forth by 600 Foothill Owner was proper and used it
3 as the basis to impose a \$14,000,000 bond requirement on the City.

4 **II. LEGAL BACKGROUND**

5 “The HAA is today strong medicine precisely because the Legislature has diagnosed a
6 sick patient.” (*California Renters Legal Advocacy & Education Fund v. City of San Mateo* (2021)
7 68 Cal.App.5th 820, 854.) The HAA, among other provisions aimed at facilitating the approval
8 and provision of housing, mandates that a local agency must post a bond in the event the local
9 agency appeals an adverse HAA judgment. (Gov. Code, § 66589.5, subd. (m)(1) [“[i]f the local
10 agency appeals the judgment of the trial court, the local agency shall post a bond”]; *see id.*, subd.
11 (a)(2)(L) [“It is the policy of the state that [the HAA] be interpreted and implemented in a manner
12 to afford the fullest possible weight to the interest of, and the approval and provision of,
13 housing.”].) The intent of the appeal bond requirement is to protect the project applicant against
14 damages “as a result of increases in costs, loss of permits or land, or other consequences of the
15 amount of time it took to get through the legal process.” (*See* Petitioner’s Request for Judicial
16 Notice in Support of Motion for Appeal Bond, filed June 17, 2024, Exh. A; *cf.* Code of Civ.
17 Proc., § 529, subd. (a) [“[o]n granting an injunction, the court or judge must require an
18 undertaking on the part of the applicant to the effect that the applicant will pay to the party
19 enjoined any damages, not exceeding an amount to be specified, the party may sustain by reason
20 of the injunction, if the court finally decides that the applicant was not entitled to the
21 injunction.”].)

22 The measure of damages recoverable on a bond is ordinarily the amount necessary to
23 compensate a litigant for losses proximately caused. (*See, e.g., Russell v. United Pac. Ins. Co.*
24 (1963) 214 Cal.App.2d 78, 88 [losses that “flowed directly from and as an immediate
25 consequence” of injunction were proximately caused damages]; *Simmons v. California Coastal*
26 *Com.* (1981) 124 Cal.App.3d 790, 797–98 [increased costs of construction, loan fees, and interest
27 support damages resulting from stay even when extrinsic conditions to commence construction
28

1 had not been met]; *Reese v. Wong* (2001) 93 Cal.App.4th 51, 57–61 [undertaking intended to
2 indemnify the claimant for all damages proximately resulting from the expungement which the
3 claimant may incur if the claimant prevails upon the real property claim].) The burden is on the
4 City to disprove the damages. (*See Grade-Way Construction Co. v. Golden Eagle Ins.* (1993) 13
5 Cal.App.4th 826, 837.)

6 **III. FACTUAL AND PROCEDURAL BACKGROUND**

7 The discrete nature of the contentions raised by this motion do not require a detailed
8 description of the extensive factual and procedural background at issue in this action. A more
9 complete description can be found in other filings in this action. For purposes here, it is sufficient
10 to note the background set forth below.

11 On April 5, 2024, the Court entered judgment (the “Judgment”) against the City finding
12 the City violated the HAA and ordered that a peremptory writ of administrative mandate (the
13 “Writ”) be issued directing the City to timely process the Project “in a manner that complied with
14 the [HAA] and state law.” (Court’s Judgment, dated April 5, 2024.) More specifically, the
15 Judgment and Writ mandate that the City process the Project to a final decision within 60 days of
16 service of the Writ unless the City has complied with the 45-day deadline outlined in the Writ to
17 file and serve a statement identifying why environmental review under the California
18 Environmental Quality Act (“CEQA”) (*i.e.*, Public Resources Code section 21000 et seq.) made it
19 infeasible for the City to comply with the prescribed 60-day deadline. (*Id.*)

20 On April 11, 2024, the City appealed the Judgment (the “Appeal”). (City’s Notice of
21 Appeal, dated April 11, 2024.) The City did not post an appeal bond at that time (or at any time as
22 discussed herein) as required under subdivision (m)(1) of the HAA. (Declaration of Alexander M.
23 DeGood (“DeGood Decl.”), ¶ 4.) Nor did the City file any motion or application requesting the
24 Court set the amount of the bond required by the HAA. (DeGood Decl., ¶ 5.)

25 On May 22, 2024, the City was served with the Writ—starting the clock on 60- and 45-
26 day deadlines provided for in the Writ. (Declaration of Alexander Gourse in Support of
27 Petitioner’s Motion for Appeal Bond (“Gourse Appeal Bond Decl.”), filed June 17, 2024, Exh.
28

1 A.) On May 23, 2024, Petitioner California Housing Defense Fund (“CalHDF”) informed the
2 City that the clock for compliance with the Writ had started to run. (*Id.*) More specifically,
3 CalHDF informed the City that “if the City wishes to obtain a stay of the Judgment in light of its
4 April 11, 2024 appeal, it must post an appeal bond pursuant to Government Code section
5 65589.5(m)(1).” (*Id.*) CalHDF further informed the City that 600 Foothill Owner would be
6 damaged at the accumulative rate of \$683,183 per month for the further delay occasioned by the
7 Appeal. (*Id.*) An offer was made to the City to stipulate to an appeal bond amount. (*Id.*)

8 Due to the City’s failure to post the required appeal bond, on June 17, 2024, CalHDF filed
9 a motion for an order requiring the City to post an appeal bond in the amount of \$14,096,952.
10 (Motion for Appeal Bond, filed June 17, 2024.) On June 18, 2024, Petitioners-Intervenors the
11 People of the State of California, Ex. Rel. Rob Bonta and the California Department of Housing
12 and Community Development (collectively, the “State”) filed a joinder supporting CalHDF’s
13 bond motion. (Joinder to Motion for Appeal Bond, filed June 18, 2024.)

14 Following a series of discovery disputes and multiple hearings, on November 18, 2024,
15 the Court issued an order that the HAA appeal bond requirement applies to the City in this action
16 and that the bond shall be to the benefit of 600 Foothill Owner. (Court’s November 18, 2024
17 Order.) After further discovery and multiple continued hearings, on February 28, 2025, the Court
18 determined the sufficiency of the HAA appeal bond. (Court’s February 28, 2025 Order.) More
19 specifically, the Court determined the HAA appeal bond should be set in the amount of \$14
20 million and ordered the City to post a bond in that amount within 30 days or dismiss the Appeal.
21 (*Id.*)

22 Thereafter, following the City’s request to the Court of Appeal to dismiss the Appeal, on
23 March 10, 2025, the Court of Appeal dismissed the Appeal and issued a remittitur therewith.
24 (Remittitur, filed March 10, 2025.) On April 10, 2025, 600 Foothill Owner informed the City of
25 the damages it had incurred due to the litigation delay caused by the City’s failure to comply with
26 a mandatory duty under state law. (DeGood Decl., ¶6.) The City did not respond. (*Id.*)
27
28

1 **IV. ARGUMENT**

2 **A. 600 Foothill Owner Has Been Damaged by the City’s Failure to Post the HAA**
3 **Appeal Bond**

4 In its February 28, 2025, order, this Court stated that the mandated bond “should account
5 for the consequences of delay, *e.g.*, increased construction costs, to ensure that real party [600
6 Foothill Owner] can still build housing if Petitioner [CalHDF] prevails on appeal.” (Court’s
7 February 28, 2025, Order Setting Bond Amount, p. 4). The Court went on to state that in
8 attacking the damages set forth by 600 Foothill Owner, the “City makes a series of
9 arguments...which are not persuasive.” (*Id.*) As to the bond amount, the Court held that “the
10 amount of the bond should be based upon the housing developer’s total potential losses” and
11 stated, “the court adopts Petitioner’s estimates and methodology and orders a bond of \$14
12 million.” As such, this Court has already (i) found that litigation delays significantly damage 600
13 Foothill Owner, and (ii) set the measure of damages at the level set forth by 600 Foothill Owner.
14 Such a determination is in line with the HAA’s structure and mandates, which hold that as a
15 matter of law, litigation delays significantly damage housing developers, and mandate appeal
16 bonds to account for such damages. Given this, there can be no dispute, legal or factual, as to the
17 measure of 600 Foothill Owner’s damages.

18 **B. The City is Not Immune from Damages for Its Failure to Comply with Its**
19 **Mandatory Duty to Post an HAA Appeal Bond**

20 Much as to the City’s argument that it was insulated from the HAA appeal bond
21 requirement by Code of Civil Procedure section 995.220 was unavailing, so too is any attempt by
22 the City to insulate itself from the damages it caused for its failure to comply with its mandatory
23 requirement to post an HAA appeal bond. Just as the HAA’s appeal bond requirement carves out
24 a narrow exception to the general governmental entity legal framework (and its prohibition
25 requiring a governmental entity to furnish a bond), so too, by derivative implication, the HAA
26 appeal bond requirement carries with it an equally narrow exception to a governmental entity’s
27 ordinary immunity from damages when a local agency fails to post the required appeal bond but
28 still delays a project under the guise of an appeal. In any event, as relevant here, Government

1 Code section 815.6 provides an express exception to the general rule of public entity immunity.

2 That section provides:

3 Where a public entity is under a mandatory duty imposed by an
4 enactment that is designed to protect against the risk of a particular
5 kind of injury, the public entity is liable for an injury of that kind
6 proximately caused by its failure to discharge the duty unless the
7 public entity establishes that it exercised reasonable diligence to
8 discharge the duty. (Gov. Code, § 815.6)

9 Government Code section 815.6 has three discrete requirements, that if satisfied subjects
10 the public entity to liability for the resulting harm. (*B.H. v. County of San Bernardino* (2015) 62
11 Cal.4th 168, 179.) The three requirements are—(1) an enactment must impose a mandatory duty;
12 (2) the enactment must be meant to protect against the kind of injury suffered; and (3) breach of
13 the mandatory duty must be a proximate cause of the injury suffered. (*Id.*) As detailed below,
14 each of these requirements is satisfied here.

15 **The HAA is an Enactment:** As a threshold matter, “enactment” is defined as “a
16 constitutional provision, statute, charter, provision, ordinance or regulation.” (Gov. Code, §
17 810.6.) The statutory HAA, and specifically subdivision (m)(1), is certainly an enactment for
18 these purposes.

19 **The HAA Imposes a Mandatory Duty on the City:** As the Court has already found, on
20 multiple occasions, subdivision (m)(1) of the HAA imposes a mandatory duty² on a local agency
21 to post an appeal bond in the event the local agency appeals an adverse HAA judgment, this
22 requirement is satisfied. (*See* Court’s November 18, 2024 Order; Court’s February 28, 2025
23 Order.)

24 **The HAA Appeal Bond Requirement Meant to Protect Against the Kind of Injury**
25 **Suffered by 600 Foothill Owner:** The Legislature enacted the HAA appeal bond requirement
26 specifically to protect developers from precisely the harms suffered here—delays, increased costs,
27 and uncertainty caused by a local agency appealing unfavorable HAA judgments and prolonging

28 ² This is but just one instance of the City willfully ignoring its mandatory duties under the law. The City’s requirement to process the Project *as a Builder’s Remedy project* was a mandatory duty in the first instance. The City has a further mandatory duty following the issuance of the Judgment and Writ to process the Project. As has been established, the City has failed to reasonably comply with either of these duties.

1 the legal process. As the Court has already stated:

2 In enacting the HAA’s bond provision, the Legislature recognized
3 that: This bill adds fines and an appeals bond requirement to the
4 enforcement provisions of the anti-NIMBY law. Affordable
5 housing developers have found that, even if they are successful in
6 an anti-NIMBY court action against a local government, they often
7 lose their projects as a result of increases in costs, loss of permits or
8 land, or other consequences of the amount of time it took to get
9 through the legal process. (Court’s February 28, 2025 Order, pp. 2 –
10 3 [discussing the Assembly Floor Analysis issued on August 18,
11 2005 for purposes of the Assembly’s final vote on SB 575, which
12 added the appeal bond requirement to the HAA].)

13 This requirement is satisfied.

14 **The City’s Breach Proximately Caused the Injury Suffered:** The City’s failure to post
15 the mandatory HAA appeal bond had the effect of prolonging the legal process while depriving
16 600 Foothill Owner of the statutory protection against project delays—thereby exposing 600
17 Foothill Owner to the damages the HAA was enacted to guard against in delayed implementation
18 of the Project. The City stated that it considered itself under no such obligation to comply with
19 the Writ (and process the Project to a final decision), by virtue of the Appeal. (*See* City’s
20 Statement in Conformance with Judgment Entered April 5, 2024 and Writ Issued April 16, 2024,
21 filed April 7, 2025 (the “City’s Conformance Statement”), pp. 2:14–3:2.) This judicial statement
22 is in line with the City’s conduct during the pendency of the Appeal by which it continually
23 neglected to process the Project (as a builder’s remedy project) in good faith—and therefore by
24 which 600 Foothill maintained no reasonable expectation that the City would process the Project
25 in good faith until the Appeal was decided or withdrawn. (*See* Court’s February 28, 2025 Order,
26 pp. 4–5 [“The City’s argument [of speculative damage estimates] is not persuasive because the
27 City asks the real party to undertake the CEQA review—an expensive and time-consuming
28 process—while it simultaneously challenges Judge Beckloff’s decision to grant the petition.”].) In
short, the City’s failure to post the required HAA appeal bond enabled the City to delay the
Project and directly cause harm to 600 Foothill Owner without 600 Foothill Owner being
sufficiently secured against the damages incurred from Project delay. This requirement is
satisfied.

1 Accordingly, all three requirements for liability under Government Code section 815.6 are
2 satisfied and the City is liable for damages resulting from its failure to post an appeal bond in
3 connection with the Appeal.

4 In addition, Code of Civil Procedure section 917.1 provides:

5 “Unless an undertaking is given, the perfecting of an appeal shall not stay enforcement of
6 the judgment or order in the trial court if the judgment or order is for any of the following:

7 (1) Money or the payment of money, whether consisting of a special fund or not, and
8 whether payable by the appellant or another party to the action. []

9 (b) The undertaking shall be on condition that if the judgment or order or any part of it is
10 affirmed or the appeal is withdrawn or dismissed, the party ordered to pay shall pay the amount of
11 the judgment **or order**[.]” (emphasis added)

12 The bond proceedings made necessary by the City’s failure to follow state law were post-
13 judgment proceedings, and the court’s ruling on the bond was an order, bringing it within the
14 ambit of the code. As such, the City was immediately required to post a bond, and failure to do so
15 results in a mandatory payment of the amount of the order.

16 **C. The City Has Also Effected a Temporary Takings of the Property for which**
17 **Just Compensation is Required**

18 The Fifth Amendment of the United States Constitution (as applied through the
19 Fourteenth Amendment) and Article 1, Section 19 of the California Constitution forbids the
20 taking of private property for public use with just compensation. (U.S. Const., Amends. V, XIV;
21 Cal. Const., art. I, § 19.) For over a century, courts have held that takings are not limited to
22 physical appropriations or ousters of land—and, accordingly, “if regulation goes too far it will be
23 recognized as a taking.” (*Penn Coal Co. v. Mahon*, 260 U.S. 393, 415 (1922).) As with regulation
24 that “goes too far,” so too with permitting delay that “goes too long” or is “extraordinary.” (*See*
25 *First English Evangelical Lutheran Church v. County of Los Angeles*, 42 U.S. 304, 321 (1987)
26 [suggesting that “normal” delays in the permitting process would not constitute a takings]; *Agins*
27 *v. City of Tiburon*, 447 U.S. 255, 263, fn. 9 (1979), abrogated on other grounds in *Lingle v.*
28 *Chevron U.S.A. Inc.*, 544 U.S. 528 (2005); *see also Landgate, Inc. v. California Coastal*

1 *Commission* (1998) 17 Cal.4th 1006, 1021 [citing *Agins*].) Indeed, in *Tahoe-Sierra Pres. Council*
2 *v. Tahoe Reg'l Planning Agency*, 535 U.S. 302 (2002) (“*Tahoe-Sierra*”), the Supreme Court held
3 that “the duration of the restriction is one of the important factors that a court must consider in the
4 appraisal of a regulatory takings claim.” (*Tahoe-Sierra*, 535 U.S. 302, 342 (2002); *see also*
5 *Lockaway Storage v. County of Alameda* (2013) 216 Cal.App.4th 161, 185–188 (“*Lockaway*”)
6 [finding a temporary taking from a county’s permitting delays].)

7 In *Penn Central Transp. Co. v. New York City*, 438 U.S. 104 (1978) (“*Penn Central*”), the
8 Supreme Court created a test that has become the “polestar” for analyzing whether a government
9 action constitutes a partial regulatory taking. The *Penn Central* inquiry is not a formula but an ad
10 hoc factual inquiry that weighs several factors for evaluating a regulatory takings claim.
11 (*Lockaway, supra*, 216 Cal.App.4th at 185.) Courts conducting such an inquiry have identified
12 three primary factors: (1) the “economic impact” of the regulation on the claimant, (2) the extent
13 to which the regulation interfered with “distinct, investment-backed expectations,” and (3) the
14 “character of the government action.” (*Id.*) Pursuant to *Tahoe-Sierra*, extraordinary delay puts a
15 thumb on the scale in favor of finding a taking under the *Penn Central* inquiry. (*Tahoe Sierra,*
16 *supra*, 535 U.S. at 342.)

17 Without ever posting the HAA appeal bond (and effectuating the Appeal), the City’s
18 stonewalling of the Project (at least for the duration of time the City failed to process the Project
19 due to its belief that the Appeal allowed it to not process the Project) **constitutes extraordinary**
20 **delay** (well beyond what would ordinarily be expected in the land-use regulatory permitting
21 process). With, as detailed below, the other primary *Penn Central* factors weighing in favor of
22 600 Foothill Owner, the City’s actions here have effected a temporary taking of the Property.

23 **Economic Impact:** For this factor, a “government action that *unreasonably* impairs the
24 value or use of the property may be an indication that a taking occurred.” (*Lockaway, supra*, 216
25 Cal.App.4th at 185, emphasis in original.) In *Lockaway*, the court held that the county
26 unreasonably impaired the value and use of the developer’s property because the developer
27 “always intended to develop the property as a storage facility and requiring it to pursue some
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1 different authorized use would have deprived [developer] of the return on its investment that it
2 ‘reasonably expected from the intended use.’” (*Id.*) So too here, 600 Foothill Owner has
3 consistently attempted to pursue development of the Property pursuant to its vested builder’s
4 remedy project application. (Declaration of Jonathan Curtis in Support of Petitioner’s Motion for
5 Appeal Bond (“Curtis Appeal Bond Decl.”), filed June 17, 2024, Exh. B.; Gov. Code, § 65941.1,
6 subd. (a); Gov. Code, § 65589.5, subd. (o).) The City’s complete frustration of the permitting
7 process for the Project, stemming from the Appeal and the City’s failure to post the HAA appeal
8 bond, has unreasonably impaired the Property’s value and use as 600 Foothill Owner was
9 thwarted from moving forward with the Project that it was legally entitled to (at a minimum)
10 pursue. (*See* Curtis Appeal Bond Decl. [detailing impairment to the Property’s value and use].)


11 **Distinct, Investment-Backed Expectations:** This factor requires consideration of how the
12 government’s action has interfered with the property owner’s distinct investment-backed
13 expectations. (*Lockaway, supra*, 216 Cal.App.4th at 185.) A “‘reasonable investment-backed
14 expectation’ must be more than a ‘unilateral expectation or an abstract need.’” (*Id.*) There is no
15 denying that 600 Foothill Owner had a reasonable investment-backed expectation that the Project
16 could proceed. This was the case, in the first instance, when 600 Foothill Owner obtained vested
17 rights to use the Builder’s Remedy upon filing a SB 330 preliminary application for the Project.
18 (Gov. Code, § 65941.1, subd. (a); Gov. Code, § 65589.5, subd. (o); *see* Court’s March 4, 2024
19 Order, pp. 15–16.) And this was certainly the case when the Court entered Judgment and issued
20 the Writ requiring the City to process the Project to a final decision within 60 days of service of
21 the Writ in a manner that complied with the HAA and state law (unless the City *timely* raised
22 infeasibility to comply with that deadline, which the City did not do). (Court’s Judgment, dated
23 April 5, 2024; *see* Gourse Appeal Bond Decl., Exh. A [Writ served on the City on May 22, 2024];
24 City’s Conformance Statement [filed on April 7, 2025].)

25 **Character of the Government Action:** This factor requires consideration of the
26 “character” of the government’s action. (*Lockaway, supra*, 216 Cal.App.4th at 186.) The Supreme
27 Court has illustrated that this means whether the government’s action “amounts to a physical
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1 for the damages to be suffered by an applicant in the likely event the city's litigation defense is
2 not successful. Here, the City knowingly and openly refused to comply with a clear statutory
3 duty, fundamentally undermining the force and effect of the HAA and damaging 600 Foothill
4 Owner. For the foregoing reasons, 600 Foothill Owner respectfully requests that the Court order
5 the City to pay **\$6,386,301.37³** to 600 Foothill Owner.

6
7
8 Dated: August 27, 2025

COX, CASTLE & NICHOLSON LLP

9
10 By: 
11 Alexander M. DeGood
12 Robert R. Begland
13 Eric J. Cohn
14 Attorneys for Real Party In Interest 600
15 FOOTHILL OWNER, LP

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22 ³ This amount is calculated based on the following methodology. First, the Court has already
23 determined that the damages calculation set forth by 600 Foothill Owner was proper and used it
24 as the basis to impose a \$14,000,000 HAA appeal bond requirement on the City. Second, the
25 \$14,000,000 HAA appeal bond requirement was predicated on an anticipated 24-month delay for
26 the duration of the Appeal. Third, this 24-month (or two-year) period was converted into 730 days
27 (*i.e.*, 365 days per year * two years), which yielded a (prorated) daily delay damages rate of
28 \$19,178.08. Fourth, applying this \$19,178.08 daily delay damages rate over the 333-day delay
period the Appeal was pending without the City posting the HAA appeal bond, results in damages
of \$6,386,301.37 (*i.e.*, \$19,178.08 * 333 days). In sum, this methodology uses the Court's prior
determinations on the damages calculations in setting the HAA appeal bond amount, but ensures
600 Foothill Owner is only awarded damages for the period during which the Project was
unlawfully delayed from the City's failure to post the HAA appeal bond.

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PROOF OF SERVICE AND CERTIFICATION

I, Ramona S. Lee, declare:

I am a citizen of the United States and employed in Los Angeles County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 2029 Century Park East, Suite 2100, Los Angeles, California 90067-3284. My email address is rlee@coxcastle.com. On August 27, 2025, I served a copy of the within document(s):

NOTICE OF MOTION AND MOTION TO RECOVER DAMAGES FOR CITY OF LA CAÑADA FLINTRIDGE'S FAILURE TO COMPLY WITH HOUSING ACCOUNTABILITY ACT APPEAL BOND REQUIREMENT

- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, the United States mail at Los Angeles, California addressed as set forth below. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.
- by placing the document(s) listed above in a sealed envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to an agent for delivery.
- by transmitting via **e-mail or electronic transmission** the document(s) listed above to the person(s) at the e-mail address(es) set forth below of the addressee(s) pursuant to Rule 2.251 of the California Rules of Court. The transmission was complete and without error and I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

SEE ATTACHED SERVICE LIST

I hereby certify that the above document was prepared and printed on recycled paper.

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

Executed on August 27, 2025, at Los Angeles, California.



Ramona Lee

SERVICE LIST

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