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**[Exempt From Filing Fee
Government Code § 6103]**

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT

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

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

16 Petitioner and Plaintiff,

Honorable Stephen I. Goorvitch
Department:82

17 v.

18 CITY OF LA CAÑADA FLINTRIDGE,

**RESPONDENT CITY OF LA CAÑADA
FLINTRIDGE’S OPPOSITION TO 600
FOOTHILL’S MOTION TO RECOVER
DAMAGES PURPORTEDLY IN
CONNECTION WITH THE HAA’S
APPEAL BOND REQUIREMENT**

19 Respondent and Defendant,

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

22 Real Party in Interest.

(Filed concurrently with Declaration of Peter
Sheridan in support of Opposition to Motion)

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

Hearing: October 17, 2025
Time: 9:30 a.m.
Dept.: 82

26 Petitioners-Intervenors.

Action Filed: July 25, 2023

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1 **I. INTRODUCTION**

2 600 Foothill spends 11 pages arguing for imposition of fines of damages in an amount in
3 excess of \$6 million without citing any law this Court can rely on for making such an outrageous
4 award, and certainly not under the HAA.

5 600 Foothill, moreover, simply ignores the long procedural history that led to the Court
6 ordering the City of La Canada (the “City”) to post a \$14 million bond OR dismiss its appeal.
7 Throughout 600 Foothill’s “Motion to Recover Damages for the City of La Canada Flintridge’s
8 Failure to Comply with the HAA Bond Require” (the “Motion”) 600 Foothill assumes and asserts
9 that at some time after judgement in the underlying action the City was required to post an appeal
10 bond of some amount (even without Court order). 600 Foothill entirely ignores that the HAA
11 requires that the Court set the bond amount, but the Court never ordered the City to post a bond
12 whether or not the City pursued its appeal. 600 Foothill cites no precedent suggesting that the City
13 was ever under a present duty or obligation to post an appeal bond, but given the high amount of the
14 bond amount set IF the City chose to maintain its appeal, 600 Foothill apparently cannot resist
15 trying to grasp at some dollar amount. This is all based upon an easily dismissed assertion though,
16 and without any such obligation to post a bond, the entire Motion fails.

17 The legislative history of the HAA’s appeal bond requirement, adopted in 2005, reveals that
18 the Legislature considered originally allowing a damage claim to be asserted under the HAA, but
19 deleted it in favor of fines (with their own predicate facts not present here), the appeal bond
20 determination by the Court, and related provisions now found in the statute. (Sheridan Decl. ¶¶ 5-7;
21 Exh. D.)

22 Also ignoring the history of this case and the law, as well as its own admission in its papers
23 and at the hearing, 600 Foothill wrongly asserts that the amount of the bond set by the Court
24 represents a final adjudication of actual damages, and ignores the requirements of the bond law that
25 would require 600 Foothill to make a motion to “prove up” its actual damages after the appeal and
26 that the City be allowed to present contrary evidence (if the City had actually been required to post a
27 bond). The bond amount, based on projected losses and forward looking estimates simply does not
28 entitle 600 Foothill to a pro rata share of some large amount any more than if it prevailed on appeal

1 and then was able to draw down on a bond. The Court ordered the City to post a bond OR dismiss
2 its appeal, and the City chose to dismiss its appeal rather than post such a high bond.

3 No delay can be attributed to the City while it litigated the appeal bond. The City had every
4 right to the adversarial process that forced the Court to set an amount without appellate guidance on
5 how the bond should be calculated under the HAA, among other novel issues of law. Just for
6 example, cities are normally exempt from any requirement to post a bond, and the Court was forced
7 to harmonize the HAA with a competing statute. But each of 600 Foothill’s arguments fail because
8 they are all premised on a purported legal duty by the City to post an appellate bond of some
9 amount, even absent any order of the Court setting that amount.

10 Next, 600 Foothill oddly tacks on an argument for damages for a purported “temporary
11 regulatory taking” of the Property, again based on the City not posting an appeal bond. Ignoring all
12 rules of civil procedure, and despite the lack of any cause of action in a complaint for a temporary
13 taking or inverse condemnation, 600 Foothill asks the Court to set a trial on this issue. This
14 transparent attempt to seek a trial on the post-judgment time period simply means that 600 Foothill
15 is looking for piecemeal litigation and would like to use a ruling by the Court in a separate lawsuit
16 for Constitutional claims related to pre-judgment conduct by the City. This all renders 600
17 Foothill’s reliance on *Penn Central Transp. Co. v. New York City* (1978) 438 U.S. 104 and related
18 cases a true oddity in post-trial motion practice and there is no precedent for what 600 Foothill
19 proposes.¹ In this motion, 600 Foothill misapprehends the HAA’s bond requirements, ignores the
20 procedural history that led to the bond amount set by the Court, and simply ignores that they have
21 not brought a case that would even allow the Court to consider a Constitutional takings or inverse
22 condemnation claim.²

24 ¹ Now that the City has given all necessary final approvals for this Project on October 3, 2025,
25 subject to one final hearing on October 14, 2025 (if needed) it is time for this case to end and for
26 600 Foothill to use its entitlements. While 600 Foothill took an appeal from the Planning
27 Commission findings imposing an “indemnity” condition of approval, that same condition was
28 removed from the Tract Map conditions by the City Council on October 3, 2025 along with changes
to other conditions to which 600 Foothill objected. (Sheridan Decl. ¶ 8.)

² 600 Foothill has one remaining cause of action, its Ninth for “Denial of Fair Trial” under § 1094.5;
after several inquiries of 600 Foothill by counsel for the City as to 600 Foothill’s intentions in this
regard, and with no response from 600 Foothill, the City shortly will file a motion to dismiss for
lack of prosecution or to set trial. (Sheridan Decl. ¶ 9.)

1 **II. FACTUAL AND PROCEDURAL HISTORY LEADING TO THE SETTING OF A**
 2 **BOND AMOUNT.**

3 As an initial matter, and not that it matters on this legally unsupportable motion, the
 4 procedural history of the bond motion and subsequent motion practice reveal that the City did not
 5 engage in delay. There were significant legal and factual issues that required briefing before the
 6 Court could set a bond. The history of the various filed motions is set forth in the Court’s tentative
 7 and final order on the bond issue (dated February 28, 2025, Sheridan Decl., Exhs. B-C), but the
 8 serious legal and factual questions faced by the Court bear repetition in the face of 600 Foothill’s
 9 allegations that the City engaged in some kind of punishable conduct.

10 ***Initial Legal Threshold Issues:*** 600 Foothill (or CHDF when appropriate) has always
 11 argued as though section (m)(1) of the HAA is somehow self-executing or that the City should have
 12 simply posted whatever bond 600 Foothill requested, even as early as CHDF’s June 17, 2024
 13 Motion for Appeal Bond. The HAA, however, specifies at (m)(1) that the Court must set the amount
 14 of the bond: “If the local agency appeals the judgment of the trial court, the local agency shall post a
 15 bond, **in an amount to be determined by the court**, to the benefit of the plaintiff if the plaintiff is
 16 the project applicant.”³ (emphasis added) The Court had to adjudicate a number of novel issues
 17 before a bond could be set and, notably, after the Court’s tentative ruling at the November 18, 2024
 18 hearing on **CHDF’s** June 17, 2024 Bond Motion, where the Court initially set a bond in the amount
 19 of \$1 million, CHDF and 600 Foothill wanted to further litigate these issues by taking the deposition
 20 of the City’s expert and then filing sets of new papers thereafter.

21 As an initial matter, cities are typically subject to a blanket exemption from any bond
 22 undertaking upon appeal. Code of Civil Procedure section 995.220 “flatly prohibits requiring
 23 governmental entities from furnishing security.” (*City of San Francisco v. Cypress Lawn Cemetery*
 24 *Assn.* (1992) 11 Cal. App. 4th 916, 921.) Section 995.220 states in relevant part as follows:
 25 “Notwithstanding any other statute, if a statute provides for a bond in an action or proceeding,
 26

27 ³ This future tense formulation of an amount to be determined by the court alone disposes of any
 28 suggestion that the City should have posted some kind of bond prior to the Court’s determination of
 the amount.

1 including but not limited to a bond for ... stay of enforcement of judgment on appeal, [cities] are not
2 required to give the bond and shall have the same rights, remedies, and benefits as if the bond were
3 given...” “Section 995.220 clearly reflects the deliberate conclusion of the Legislature that the
4 public good is best served by excusing governmental entities from the security requirements
5 otherwise imposed on litigants.” (*Cypress Lawn*, 11 Cal.App.4th at 921.) As set forth in the City’s
6 papers at the time, the phrase “notwithstanding any other statute” typically controls over subsequent
7 legal enactments. The Court, however, chose to “harmonize” the HAA with Section 995.220 and
8 ordered that a bond would be required, but no controlling precedent dictated this result because the
9 issue has not been litigated through appeal.

10 The Court also had to confront the issue of whether it could even consider the bond motion
11 brought by CHDF because it was not the “Project Applicant” as defined by the HAA. 600
12 Foothill’s case against the City lacked a final judgment because a single cause of action is still
13 remaining, forcing CHDF to “carry water” for 600 Foothill against the background of this highly
14 unusual procedural posture. While this issue was also resolved in favor of CHDF, the Court
15 permitted extensive argument for and against the City on these issues, the Court addressed these
16 novel matters methodically and with great care, and 600 Foothill’s insinuation that the City simply
17 raised frivolous arguments for purposes of delay (Motion at 13, *passim*) is not reflected by the Court
18 record regarding these issues.

19 ***The Need for Discovery:*** As briefed previously by the City, which resulted in the Court
20 permitting discovery into the purported factual basis for Mr. Curtis’ estimate of potential lost
21 profits, the City pointed out that conclusory self-serving statements, without support, regarding large
22 amounts of expected lost profits are not generally viewed favorably. Mr. Curtis was essentially
23 acting as an interested expert. Discovery, including a deposition of Jonathan Curtis (a principal at
24 600 Foothill), revealed that Mr. Curtis merely relied upon a spreadsheet devised by a colleague.
25 Setting aside arguments regarding the merits of these projections, this also led to 600 Foothill taking
26 the deposition of the City’s rebuttal expert, Paul Pocalyko.

27
28

1 All of this meant that the final hearing on the bond issue did not occur until February 28,
 2 2025.⁴ The novel legal issues, the need for factual discovery, and the Court’s own docket make it
 3 no surprise that it took until this time to reach a final decision. As the Court suggested, these legal
 4 and factual issues were difficult for the parties and the Court: “So I spent a lot of time on this, I’ve
 5 spent nights on this, I’ve spent weekends on this. And at the end of the day, I have to set the bond.”
 6 (Sheridan Decl. Exh. A, 5:4-6.)

7 At no time from judgment in favor of CHDF until the Court ordered the bond amount did
 8 the Court suggest that the City was under any present obligation to post some uncertain bond
 9 amount prior to the Court formally ordering a sum certain -- that amount was the question being
 10 litigated. When the Court did set an amount in excess of what the City could post, the City
 11 dismissed its appeal as soon as the City Council could authorize the dismissal. Then, before the
 12 passage of AB 130, that simply meant that the CEQA process continued; that was, until the law was
 13 changed this past summer, obviating the need for CEQA review and leading to approval of the
 14 Project before the City Council [5-0] on October 3, 2025 (approving the Vesting Tentative Tract
 15 Map and adopting a resolution finding the Project statutorily exempt from CEQA under AB 130).

16 **III. ARGUMENT**

17 **A. The City Was Not Required to Post a Bond Because It Dismissed Its Appeal and**
 18 **600 Foothill Has No Legally Recognized Remedy Regarding a Hypothetical**
 19 **Unposted Bond.**

20 600 Foothill never explains nor provides authority for the proposition that there was a point
 21 in time at which the City was required to post the appeal bond at issue. As set forth above, the HAA
 22 at (m)(1), states that a bond shall be posted in an “amount to be determined by **the court.**”⁵
 23 (emphasis added.) The logical progression of a future determination after judgment of a bond
 24 amount is inherent in the HAA’s language. No authority states or implies that the Project Applicant
 25 may simply demand an amount and that a City is under a duty to post a bond absent a court order
 26

27 ⁴ Even the major fires in early 2025 caused some delay in the final disposition of the bond issue.

28 ⁵ Indeed, the Court appeared to be persuaded by bond amounts set by other courts in other cases
 cited in an RJN in advance of the final hearing on the bond issue. (Sheridan Decl. Exh. A at 5:4-7.)

1 fixing the amount. If the City appears to be repeating this point it is only because 600 Foothill
2 repeatedly uses the lack of a bond in what appears to be simply an attempt to shortcut any proper
3 procedure for proving and recouping claimed damages. The only logical result of 600 Foothill's
4 posture would be cities posting any amount requested by a project applicant without any due process
5 or any proper financial data from the applicant on which to base such an amount. That would be an
6 absurd process, fraught with issues divorced from due process and the needed confrontation of facts
7 and law, and is nowhere required by the HAA. In short, 600 Foothill presents no authority
8 whatsoever, suggesting that the City was required to post a bond at any time before the Court
9 ordered one imposed.

10 There is no dispute that the City complied with the Court's February 28, 2025 Order and
11 dismissed its appeal rather than post a bond it could not afford. The choice given by the Court was
12 to post the amount OR dismiss the appeal and the City chose to dismiss the appeal. Further, the
13 Court's Order of February 28, 2025 setting the bond was made on the basis of "potential losses."
14 (Sheridan Decl. Exh. C.) No issue of actual losses has ever been adjudicated, and as set forth below,
15 the "bond law" sets forth the procedure for "proving up" the amount of actual damages incurred
16 during the course of an appeal and where there is no concrete underlying judgment amount, it is an
17 issue subject to proof. This law gives the party that posted the bond the opportunity to present
18 evidence and for the court to have what amounts to a mini-trial on what should be paid out of the
19 bond.

20 In twelve lines, 600 Foothill blithely concludes that there can be "no dispute, legal or factual
21 as the measure of 600 Foothill Owners' damages." Motion at 11. Not so. This assertion is
22 purportedly based on the order of the Court and the transcript of the final hearing. At no point,
23 however, did the Court (nor could it have) establish as a matter of law actual damages, which is
24 obviously impossible because the bond was fundamentally a best estimate based upon opinions
25 about a hypothetical future, and no facts are in the record regarding actual damages. If anything, the
26 Court faulted the lack of an alternative methodology and simply did not accept carrying costs as the
27 correct measure of potential damages. The Court even regretted the lack of clear guidance on the
28 entire HAA bond issue:

1 Look, I'll be the first to say I
2 encourage everybody to appeal every one of these things
3 because I find in this assignment especially -- I deal
4 with a lot of ambiguous issues for which there is not as
5 clear guidance. I always think if someone will just
6 appeal, at least we'll get some guidance so that the next
7 time this comes up, I can say I got reversed on this or I
8 got affirmed on this and now we know the law.
9 and I hope if, you know, whichever --
10 whatever I decide on this issue, I hope someone takes it
11 up on appeal and we get a published decision interpreting
12 the bond provision.

(Sheridan Decl. Exh. A, 40:7-18.)

9 The Court further noted that it was forced to accept the methodology of 600 Foothill because
10 it did not accept the carrying costs as the proper measure, but the Court was obviously far from
11 establishing actual damages and (with respect to the Court) no Court can predict with great certainty
12 future actual damages but only accept which estimate it views at the time as most appropriate.
13 Mr. DeGood even conceded that the amount of the bond his client sought merely reflected estimates
14 not final factual findings:

15 I think your Honor identifies in the Court's tentative that projected
16 losses are necessarily estimates for purposes of setting an appeal bond.
17 And I think that's what we have.

(Sheridan Decl. Exh. A., at 22:13-16.)

18 The maxim that "past results are no guarantee of future performance" is even more
19 applicable than usual given that all that existed at the time Mr. Curtis made his projections was an
20 inactive church and an empty parking lot, and only projections of the Projects future "profitability"
21 in an Excel sheet. Projections and estimates are the only tool available, and no expert, and of course
22 no court, can possibly predict the precise future performance of a business. In any event, the Court
23 never ruled that the amount of the bond represented actual, precise damages and that the entire
24 amount, or a pro rata share, would be simply transferred to 600 Foothill. Even if the City had been
25 able to post a bond, pursued an appeal, and lost, 600 Foothill would still not be following the law as
26 it relates to compensation for the delay of an appeal.

27 In that vein, the bond law provides protections and the opportunity to present evidence in
28 response to a party seeking to establish amounts to draw down on a bond after an appeal. Assuming,

1 arguendo, that a bond had been posted, and an appeal lost or dismissed, CCP § 996.440 (emphasis
2 added) provides the procedural mechanism for drawing down on that bond:

3 (a) If a bond is given in an action or proceeding, the liability on the bond
4 may be enforced on motion made in the court without the necessity of
an independent action.

5 (b) The motion shall not be made until after entry of the final judgment
6 in the action or proceeding in which the bond is given and the time for
7 appeal has expired or, if an appeal is taken, until the appeal is finally
determined. The motion shall not be made or notice of motion served
more than one year after the later of the preceding dates.

8 (c) Notice of motion shall be served on the principal and sureties at least
9 30 days before the time set for hearing of the motion. The notice shall
10 state the amount of the claim and shall be supported by affidavits setting
11 forth the facts on which the claim is based. The notice and affidavits
shall be served in accordance with any procedure authorized by Chapter
5 (commencing with Section 1010).

12 (d) Judgment shall be entered against the principal and sureties in
13 accordance with the motion unless the principal or sureties serve and
14 file affidavits in opposition to the motion showing such facts as may be
deemed by the judge hearing the motion sufficient to present a triable
15 issue of fact. If such a showing is made, the issues to be tried shall be
specified by the court. Trial shall be by the court and shall be set for the
earliest date convenient to the court, allowing sufficient time for such
discovery proceedings as may be requested.

16 600 Foothill’s mantra that the City was required to post a bond either when it simply asked,
17 or when the Court gave the City the choice to post a bond or dismiss its appeal, or at some other
18 time, is simply wrong and they follow no recognizable procedural mechanism to get what they want.
19 600 Foothill provides no contemporary evidence and provides nothing to refute. 600 Foothill has not
20 submitted any affidavits nor moved under the bond law, nor can it, because pursuant to the Court’s
21 Order of February 28, 2025, the City was not required to post a bond if it dismissed its appeal.

22 **B. Government Code Section 815.6 Is Not Relevant Here.**

23 600 Foothill’s argument that the City is not entitled to the usual protections of public entity
24 immunity because of Government Code Section 815.6 is entirely premised on the notion that the
25 City was actually required to post an appeal bond. (Motion at 12.) There is nothing for the City to
26 claim immunity for here, because it was not required to post a bond contrary to what 600 Foothill
27 claims. As discussed above, the bond provision of the HAA is not self-executing and requires a
28 court ordered bond amount. The City followed the Court’s order to post a bond **“or to dismiss its**

1 **appeal....**” because it dismissed its appeal as soon as the City Council could consider the issue
2 within the time frame of 30 days set by the Court. Again, as the Court noted, there was no appellate
3 guidance or formula for determining the bond amount, and the Court permitted discovery and heard
4 motions and yet did not order a bond to be posted or the appeal dismissed until late February 2025.

5 600 Foothill’s arguments with respect to a purported “breach” of law by the City (Motion at
6 13) are simply frivolous. The City was not “immediately required to post a bond” (Motion at 14)
7 and this and other material misrepresentations and outright rejection of the adversarial process are
8 shocking. 600 Foothill essentially achieved the dismissal of the City’s appeal by prevailing on an
9 extremely high bond amount that the City simply could not post. Hypothetically, if the City had
10 been able to post the bond ordered by the Court it would have maintained its appeal, yet 600
11 Foothill’s argument would only make some sense if the City had ignored the Court’s Order and
12 pursued its appeal without posting a bond (and therefore been in violation of a Court order). That is
13 not what happened though, and the Court should disregard this ill-conceived motion based upon 600
14 Foothill’s misrepresentations regarding the very language and import of the Court’s orders.

15 ***Fines Would be the Theoretical Remedy for Non-Compliance:*** Further discussion of 600
16 Foothill’s argument in this respect is hardly warranted, but the HAA as it existed at that time
17 provided for fines if a City disregards a court order under the HAA, pursuant to 65589.5(k)(1)(B)
18 and (C). Those fines have been increased through changes in the law, but they continue to reflect a
19 legislative history that permits courts to order fines paid to local housing agencies (not the project
20 applicant) as opposed to damages if and only if a court order under the HAA is not followed.
21 Neither Judge Beckloff nor this Court fined the City, since no basis for such fines existed or exists
22 under the HAA, and in any event if there were a fine under the HAA, it would not go to the project
23 applicant (600 Foothill). (Sheridan Decl. ¶¶ 4-7; Exh. D.)

24 In sum, 600 Foothill’s entire argument that it was “damaged” by the City’s decision to
25 follow the Court’s Order and dismiss its appeal **or** post a \$14 million bond appears to be premised
26 on the wish that there were a bond to draw down on after a presumed win at the appellate level.
27 Because the City faced a Hobson’s choice due to the amount of the appeal, we will never know what
28 the Court of Appeal would have ruled and what rights the parties would have had after a now-

1 hypothetical appeal. But the premise that the City was required to post a bond and dismiss its appeal
 2 is demonstrably false, as is the premise that the City was required to post a bond even though it
 3 dismissed its appeal. 600 Foothill cannot be rewarded for misstating the Court’s orders.

4 **C. 600 Foothill’s Attempt to Create a Takings Claim in Post-Trial Practice Is**
 5 **Facially Defective.**

6 600 Foothill confusingly and improperly requests a trial based upon what appears to be a
 7 Fifth Amendment temporary takings claim or inverse condemnation claim, without, however, a
 8 complaint (or even a cause of action) on file for such a claim, based on alleged facts that postdated
 9 judgment for CHDF in the underlying action. Even more extraordinarily, the purported basis for
 10 these Constitutional claims is that the City did not post an appeal bond, and a vague allegation that
 11 the City engaged in “stonewalling of the Project during the time the appeal was pending and the
 12 parties were litigating the bond amount.” (Motion at 15.) If this appears at first glance to be a
 13 misreading, 600 Foothill removes any question when it repeats any the same allegation as the
 14 factual predicate for its new claims again:

15 The City’s complete frustration of the permitting process for the
 16 Project, stemming from the Appeal and the City’s failure to post the
 17 HAA appeal bond, has unreasonably impaired the Property’s value and
 use as 600 Foothill was thwarted from moving forward with the Project
 that it was legally entitled to (at a minimum pursue).

18 Motion at 17 (emphasis added).

19 The City only reiterates these statements because they are so shockingly wrong, and there is
 20 no need to recite all of the violations of civil procedure that would occur if, without a Complaint,
 21 without specific allegations in a Complaint to challenge, and without a cause of action asserting
 22 such a theory, 600 Foothill’s wish were granted and it was able to have a trial without a live claim.

23 600 Foothill’s blatant attempt to have a takings or inverse condemnation trial on post-
 24 judgment protected litigation conduct, while maintaining its separate lawsuit for pre-judgment
 25 actions, is an invitation to piecemeal litigation that is not countenanced by any of the cases cited by
 26 600 Foothill. No precedent allows it. There is no reason for the City to offer an analysis of *Penn*
 27 *Central* or any other Constitutional takings case in response to a defective motion and without a
 28 pending count or Complaint to challenge. Each of the cases cited in this regard by 600 Foothill was

1 based upon actual lawsuits with specific Constitutional claims, not some kind of post-trial assertion
 2 untethered to a pleaded claim. For the sake of argument, what 600 Foothill proposes is a trial based
 3 upon the City not posting a bond (that it was not required to post) to establish a takings claim. There
 4 is no “government action” under *Lockaway Storage v. County of Alameda* (2013) 216 Cal.App.161,
 5 as 600 Foothill wrongly argues. (Motion at 15.) Likewise, there was no “distinct, investment-
 6 backed expectations” as to the time period involved because the City timely filed a notice of appeal
 7 and the litigation of the bond action was entirely appropriate and a proper use of the adversarial
 8 system. The “character of the government action” does not weigh in 600 Foothill’s favor because
 9 the “character of the government’s action” is the manifestly unsupported statement that the City **had**
 10 **to post a bond** contrary to the express words of the Court’s order – namely, post the bond or
 11 dismiss. None of the precedents offered can support a cause of action based on a duty that did not
 12 exist (apparently contemporaneously posting whatever bond 600 Foothill wanted when the City
 13 filed its Notice of Appeal). And 600 Foothill has not provided any evidence that the City’s conduct
 14 has denied to it “all or substantially all” of the economic value of the property located at 600
 15 Foothill Boulevard, a quantum of loss even the broad-minded Ninth Circuit says must exceed 75
 16 percent to 92.5 percent, depending on circumstances. (*Colony Cove Properties, LLC v. City of*
 17 *Corona*, 888 F.3d 445, 451 (9th Cir. 2018).)

18 The Court simply cannot do what 600 Foothill asks, and if the Court is inclined in any way
 19 to allow an amendment to an existing complaint in this action or the related action, that request must
 20 be made and briefed, and the City is entitled to all of the procedural protections afforded a defendant
 21 in a temporary taking or inverse condemnation case.

22 And, finally 600 Foothill’s third iteration of the purported factual basis for its new “claim”
 23 reveals that it is entirely deficient under *Penn Central* and its progeny.

24 Here, the City did not impose a general regulatory condition or act
 25 pursuant to a broadly applicable land use policy. Instead, the City has
 26 targeted a single developer’s project and delayed unilaterally its path to
 implementation without posting the required HAA appeal bond.
 (Motion at 17.)

27 This notion is difficult to even comprehend and the City has repeated enough times in
 28 enough ways that the Court never required it to post a bond as 600 Foothill argues—it was given a

1 choice by the Court and it chose to dismiss its appeal. In any event, this case would need to be
2 transferred to a different court for jury trial on such claims.

3 **D. 600 Foothill’s “Damage” Calculations Are Ludicrous.**

4 At paragraph-long footnote 3, 600 Foothill purports to offer again the same estimates of
5 future damages, combined with the false claim that these numbers were ordered by the Court as
6 actual damages or some final determination that excuses 600 Foothill from having to prove actual
7 damages. The Court’s own order states that “[t]he court also recognizes that the projected losses are
8 necessarily estimates for purposes of setting the appeals bond.” As set forth above, Mr. DeGood
9 admitted that projected losses are “necessarily estimates.” The Court never purported to determine
10 with any finality any actual damages nor any right of 600 Foothill to a precise number after an
11 appeal.

12 **IV. CONCLUSION**

13 The Court should not grant any relief to 600 Foothill, not least because the entire Motion is
14 premised on misstatements of the City’s duties regarding an appeal bond under the HAA. The
15 courts are at 600 Foothill’s disposal if it wishes to file an actual lawsuit alleging a Constitutional
16 taking or inverse condemnation claim, but that lawsuit is not before this Court.

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