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David W. Slayton,
Executive Officer/Clerk of Court,
By R. Perez, Deputy Clerk

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF LOS ANGELES**

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

12 Petitioner and Plaintiff,

13 v.

14 CITY OF LA CAÑADA FLINTRIDGE,

15 Respondent and Defendant,

16 600 FOOTHILL OWNER, LP, a limited
17 partnership,

18 Real Party in Interest.

Case No. 23STCP02614

**VERIFIED PETITION FOR WRIT OF
MANDATE**

(Code of Civ. Proc. § 1094.5; Gov. Code
§ 65589.5)

**COMPLAINT FOR DECLARATORY
RELIEF**

(Code of Civ. Proc. § 1060)

19 By this VERIFIED PETITION FOR A WRIT OF MANDATE AND COMPLAINT FOR
20 DECLARATORY RELIEF, Petitioner and Plaintiff California Housing Defense Fund (“Petitioner”)
21 seeks a writ of mandate, pursuant to Code of Civil Procedure section 1094.5, to set aside the decision of
22 Respondent and Defendant City of La Cañada Flintridge (“Respondent”) to deny an application for a
23 housing development project at 600 Foothill Boulevard, and to compel Respondent to approve the
24 application or, in the alternative, to process it in accordance with the law. Petitioner also seeks a
25 declaratory judgment, pursuant to Code of Civil Procedure section 1060, that Respondent did not have a
26 housing element that substantially complies with state law from October 16, 2021 on, and that this lack
27 of compliance legally compels Respondent to approve the application at issue. Finally, Petitioner seeks
28 costs of suit and attorneys’ fees, pursuant to Government Code section 800 and section 65589.5,

1 subdivisions (k)(1)(A)(ii) and (k)(2), and Code of Civil Procedure sections 1021.5, 1029, and 1032, as
2 well as the imposition of statutory penalties against Respondent, pursuant to Government Code section
3 65589.5, subdivisions (k)(1) and (l).

4 In support, Petitioner alleges:

5 **INTRODUCTION**

6 1. “California has a housing supply and affordability crisis of historic proportions.” (Gov. Code
7 § 65589.5, subd. (a)(2)(A).) This crisis stems from local governments’ disapproving housing projects
8 without “adequate attention to the economic, environmental, and social costs” of those disapprovals.
9 (*Id.* at subd. (a)(1)(D).)

10 2. To address this crisis, the legislature has enacted numerous statutes to reduce local regulatory
11 barriers and increase the production of housing. Two of these statutes are relevant here: the Housing
12 Accountability Act (the “HAA”) (Gov. Code § 65589.5) and the Housing Element Law (Gov. Code
13 §§ 65580 et seq.). The HAA limits local governments’ power to disapprove permit applications for
14 certain housing development projects. (*See* Gov. Code § 65589.5.) The Housing Element Law requires
15 local governments to plan for an adequate supply of housing and to modify local policies and practices
16 to achieve that goal. (*See* Gov. Code § 65588.)

17 3. These two laws interact. If a local government does not timely adopt a housing element that
18 satisfies statutory requirements, the HAA prohibits that government from disapproving permit
19 applications for certain housing development projects—even if local zoning, development, or other
20 planning standards would otherwise justify disapproval. (Gov. Code § 65589.5, subd. (d)(5).) Such
21 projects are entitled to this protection so long as the associated preliminary application (*see* Gov. Code
22 § 65941.1) was submitted during the local government’s period of non-compliance: it does not matter if
23 the local government later adopts a compliant housing element (*see* Gov. Code § 65589.5, subd. (o)).
24 This provision in the HAA is known colloquially as the “builder’s remedy,” and it is intended to provide
25 local governments with incentives to adopt valid housing elements before statutory deadlines lapse.
26 (*See generally* Association of Bay Area Governments, Technical Assistance for Local Planning: The
27 “Builder’s Remedy” and Housing Elements, available at
28

1 <[https://abag.ca.gov/sites/default/files/documents/2022-10/Builders-Remedy-and-Housing-](https://abag.ca.gov/sites/default/files/documents/2022-10/Builders-Remedy-and-Housing-Elements.pdf)
2 [Elements.pdf](https://abag.ca.gov/sites/default/files/documents/2022-10/Builders-Remedy-and-Housing-Elements.pdf)>.)

3 4. Here, Respondent City of La Canada Flintridge (“the City”) seeks to nullify this critical lynchnpin
4 in California’s planning and zoning law by disapproving a proposed builder’s remedy project on the
5 grounds that it does not comply with local zoning standards—notwithstanding the City’s steadfast
6 refusal to adopt a valid housing element. Indeed, the City remains non-compliant with the Housing
7 Element Law to this day.

8 5. In light of the City’s ongoing defiance, Petitioner California Housing Defense Fund (“CalHDF”)
9 seeks a peremptory writ of mandate and declaratory judgment to correct Respondent’s unlawful
10 disapproval of the proposed builder’s remedy project, as well as other relief.

11 **PARTIES**

12 6. Petitioner CalHDF is a California nonprofit corporation in good standing in this state. CalHDF
13 was formed, in part, to advocate for the construction of housing at all income levels throughout the state,
14 including in La Cañada Flintridge, to meet the needs of California residents. This advocacy includes,
15 but is not limited to, litigation under state laws (including the HAA and the Housing Element Law) that
16 limit local governments’ discretion to disapprove housing development projects and to impose strict
17 land use policies.

18 7. Petitioner brings this Petition on its own behalf and on behalf of others affected by Respondent’s
19 failure to comply with state law.

20 8. Petitioner, furthermore, submitted written comments to Respondent prior to the project’s
21 disapproval. (*See* CalHDF, Letter to Susan Koleda, March 14, 2023, attached hereto as Exhibit 1; *see*
22 *also* CalHDF, Letter to La Cañada Flintridge City Council, April 28, 2023, attached hereto as Exhibit 2.)

23 9. Petitioner is a “housing organization” with standing to bring this suit under the HAA. (Gov.
24 Code § 65589.5, subd. (k)(2).)

25 10. Petitioner also has standing because Respondent’s disapproval of the proposed builder’s remedy
26 project has required Petitioner to divert scarce organizational resources away from other critical work;
27 because Respondent’s unlawful disapproval has exacerbated the statewide housing shortage and has
28 therefore made it more difficult and more expensive for Petitioner to attract and retain employees; and

1 because there is a critical public need for greater enforcement of key legislation intended to combat the
2 statewide housing crisis.

3 11. Respondent City of La Cañada Flintridge is a municipality of the State of California. It is the
4 local agency whose decision is challenged by this Petition.

5 12. Real Party in Interest 600 Foothill Owner, LP is a California limited partnership. It is the
6 developer and applicant seeking to build the project at issue.

7 **JURISDICTION AND VENUE**

8 13. This Court has subject matter jurisdiction over the state law claims asserted in this action
9 pursuant to Code of Civil Procedure section 1094.5 and Government Code section 65589.5.

10 14. This Court has personal jurisdiction over Respondent pursuant to Code of Civil Procedure
11 section 410.10.

12 15. Venue properly lies with this Court because Respondent is a city located in Los Angeles County.
13 (*See* Code of Civ. Proc. § 394.)

14 16. This action is timely because it has been filed and served within 90 days of the effective date of
15 Respondent’s final action denying the application. (*See* Gov. Code § 65589.5, subd. (m).)

16 17. Petitioner has a clear, present, and beneficial right in Respondent’s compliance with the non-
17 discretionary duties imposed by state law, as described herein.

18 18. Petitioner has no other plain, speedy, and adequate remedy at law.

19 19. Petitioner has exhausted all available administrative remedies, as alleged below.

20 **GENERAL ALLEGATIONS**

21 **I. Respondent’s Non-Compliance with the Housing Element Law**

22 **A. Respondent’s October Housing Element**

23 20. Respondent faced a statutory deadline of October 15, 2021 to adopt an updated housing element
24 to its general plan (the “6th cycle housing element”) that complied with state law.

25 21. Respondent missed this deadline. Indeed, Respondent did not adopt a 6th cycle housing element
26 *at all* until October 4, 2022—nearly a full year after its deadline had passed. On that date, it approved
27 an updated housing element—but one that did not comply with state law (the “October draft”).
28

1 22. The October draft did not affirmatively further fair housing or provide an assessment of fair
2 housing in the City as required by Government Code sections 8899.50 et seq. and Government Code
3 section 65583, subdivisions (c)(10)(A) and (c)(5).

4 23. The October draft did not properly assess the suitability of non-vacant sites in its housing site
5 inventory as required by Government Code section 65583, subdivision (a)(3).

6 24. The October draft did not identify actions that would be taken to ensure the sites in its housing
7 site inventory would be available for the City’s projected housing needs. This failure violated
8 Government code section 65583, subdivision (c)(1).

9 25. The October draft neglected to include a commitment to address constraints to the maintenance,
10 improvement, and development of housing for persons with disabilities. This failure violated
11 Government code section 65583, subdivision (c)(3).

12 26. The California Department of Housing and Community Development (“HCD”), which has
13 statutory authority to review and certify Respondent’s compliance (or lack thereof) with the Housing
14 Element Law, confirmed in a letter dated December 6, 2022 that Respondent’s October 4, 2022 housing
15 element did meet the requirements of state law. (*See* California Department of Housing and Community
16 Development, Letter to Susan Koleda, December 6, 2022.) This letter identified numerous deficiencies,
17 including but not limited to the ones outlined in the preceding paragraphs.

18 **B. Respondent’s February Housing Element**

19 27. Respondent adopted a revised housing element on February 21, 2023 (the “February draft”).

20 28. Like the October draft, the February draft did not satisfy the requirements of the Housing
21 Element Law.

22 29. The February draft did not affirmatively further fair housing as required by Government Code
23 sections 8899.50 et seq. and Government Code section 65583, subdivision (c)(10)(A).

24 30. The February draft did not provide an analysis explaining why its housing site inventory
25 affirmatively furthered fair housing, as required by Government Code section 65583, subdivision (a)(3).

26 31. The February draft did not specify the development potential for non-vacant sites in the housing
27 site inventory, as required by Government Code section 65583.2, subdivision (g)(1).
28

1 32. The February draft relied on non-vacant sites to satisfy more than half of the City’s lower-
2 income housing need projection. It was therefore required to explain why the existing use of these sites
3 would not impede additional residential development. (Gov. Code § 65583.2, subd. (g)(2).) It did not
4 do this.

5 33. There is another reason, unrelated to its substance, that the February draft did not satisfy the
6 Housing Element Law. “A jurisdiction that adopts a housing element more than one year after the
7 statutory deadline [...] shall not be found in substantial compliance with [the Housing Element Law]
8 until it has completed the rezoning” for its site inventory. (Gov. Code § 65588, subd. (e)(4)(C)(i); *see*
9 *also* Gov. Code §§ 65583, subd. (c)(1)(A), and 65583.2, subd. (c).)

10 34. As mentioned, Respondent’s statutory deadline to adopt a compliant housing element was
11 October 15, 2021. (*See* Gov. Code § 65588, subd. (e).)

12 35. The February draft was adopted on February 21, 2023, more than one year after the statutory
13 deadline.

14 36. Thus, Respondent was and is required to complete the rezoning for its site inventory before the
15 February draft can be found in compliance with the Housing Element Law. Respondent has not yet
16 completed that rezoning.

17 37. HCD confirmed in a letter dated April 24, 2023 that Respondent’s February 21, 2023 housing
18 element does not satisfy state law. (*See* California Department of Housing and Community
19 Development, Letter to Susan Koleda, April 24, 2023.) Among other things, this letter made clear that
20 Respondent’s housing element cannot be found in compliance with the Housing Element Law until
21 Respondent has completed the rezoning for its site inventory.

22 38. The Superior Court of Los Angeles County, Judge Chalfant, also recently addressed this matter.
23 In a statement of decision, the Court ruled that the City’s failure to complete the necessary rezoning
24 means it does not currently have a housing element in substantial compliance with the Housing Element
25 Law. (*See Californians for Homeownership, Inc. v. City of La Cañada Flintridge*, Superior Court of
26 Los Angeles County, Case No. 23STCP00699, Statement of Decision on (1) Motion for Judgment; (2)
27 Motion for Judgment on the Pleadings; and (3) Motion to Strike, filed July 11, 2023.)
28

1 39. As Judge Chalfant’s decision recognized, this lack of compliance left Respondent open to
2 development applications seeking to use the builder’s remedy. (*See* Gov. Code § 65589.5, subd. (d)(5).)

3 **II. Real Party in Interest’s Application for a Builder’s Remedy Project**

4 40. Real Party in Interest 600 Foothill Owner, LP (hereafter “Applicant”) owns property located at
5 600 Foothill Boulevard, on the corner of Foothill Boulevard and Woodleigh Lane, within the borders of
6 Respondent City of La Cañada Flintridge. This property covers approximately 1.3 acres.

7 41. Prior to submitting the application that gave rise to this dispute, Applicant sought approval for a
8 housing development project consistent with Respondent’s general plan. That proposed development
9 would have included 47 senior housing units, 12 hotel units, and 7,600 square feet of office space.
10 Notwithstanding a recommendation of approval by both City staff and the Planning Commission,
11 Respondent rejected the proposal on December 7, 2021.

12 42. In view of Respondent’s non-compliance with the Housing Element Law and its unwillingness to
13 move forward with the prior proposed development, Applicant submitted a complete preliminary
14 application, under Government Code section 65941.1, for a new residential development on November
15 10, 2022.

16 43. Upon information and belief, Respondent did not contest and has not contested that this
17 preliminary application satisfied all requirements in Government Code section 65941.1.

18 44. Applicant submitted a full application for a conditional use permit, tentative tract map, and tree
19 removal permit for the project on January 13, 2023.

20 45. Applicant paid all required application fees on January 31, 2023.

21 46. The proposed project consisted of an 80-unit housing development and thus met the definition of
22 a “housing development project” under the HAA. (*See* Gov. Code § 65589.5, subd. (h)(2).) It also
23 reserved 20 percent of its units as affordable housing for low-income households, thus qualifying as a
24 low-income housing development project under the HAA. (*See id.* at subd. (h)(3).) Hence, it was
25 eligible to proceed under the builder’s remedy. (*See id.* at subd. (d)(5).)

26 47. The application’s submission on November 10, 2022, while Respondent’s housing element was
27 out of compliance, preserved Applicant’s right to pursue the project under the builder’s remedy,
28 regardless of subsequent changes in Respondent’s housing element compliance status. (*See id.* at subd.

1 (o)(1) [“a housing development project shall be subject only to the ordinances, policies, and standards
2 adopted and in effect when a preliminary application [under] Section 65941.1 was submitted”]; *see also*
3 *id.* at subd. (j)(1) [when a project complies with the zoning and general plan standards in effect at the
4 time of the preliminary application, local government may not reject or downsize the project except in
5 very narrow circumstances].)

6 **III. Respondent’s Efforts to Avoid the Builder’s Remedy**

7 48. Seeing this builder’s remedy application, and still desperate to stop the construction of much-
8 needed housing on the site, Respondent took action. In the resolution adopting the February 21, 2023
9 housing element, the City brazenly asserted that its housing element “was substantially compliant with
10 Housing Element law as of October 4, 2022, because the version of the Housing Element to be adopted
11 by this Resolution includes no substantive changes or new data or policy decisions, but rather, only
12 clarifications of existing information are being provided.” (City of La Cañada Flintridge Res. No.
13 23-08.)

14 49. That claim was and is incorrect, both as a factual matter and as a legal matter.

15 50. Nothing in the Housing Element Law provides a basis for such a claim. (*See generally* Gov.
16 Code §§ 6680 et seq.; *accord* Department of Housing and Community Development, Letter to La
17 Cañada Flintridge, April 24, 2023; California Department of Housing and Community Development,
18 Letter to Mark Alexander, June 8, 2023.) Indeed, if a jurisdiction could achieve compliance in this
19 manner, a large portion of the Housing Element Law would, for all practical purposes, evaporate.

20 51. As explained above (*see supra*, ¶¶ 20-39), neither the October draft nor the February draft was
21 substantially compliant with the Housing Element Law.

22 **IV. Respondent’s Disapproval of the Proposed Builder’s Remedy Project**

23 **A. Respondent’s February Incompleteness Determination**

24 52. Respondent notified Real Party in Interest that Respondent believed the January 2023 application
25 was incomplete on February 10, 2023 (the “February incompleteness determination”). Among other
26 things, the February incompleteness determination requested further information on Applicant’s site
27 plan, floor plans, landscape plans, elevations, and grading plans; further documentation supporting the
28 tentative tract map application; and a paper application for the project’s density bonus.

1 53. Applicant submitted all information and documentation requested by the February
2 incompleteness determination on April 28, 2023.

3 54. Upon information and belief, Respondent did not contest and has not contested that this
4 submission fully answered the issues raised in the February incompleteness determination.

5 B. Respondent’s March Letter to Applicant

6 55. Respondent issued another letter styled as a “determination of incompleteness” on March 1, 2023
7 (the “March letter”).

8 56. The March letter stated, in relevant part: “Based on the City Council’s recent determination that
9 the City’s 2021-2029 Housing Element that was adopted on October 4, 2023 was substantially
10 compliant with state housing law [i.e. the February 21 adoption resolution], your applications [...] will
11 be processed in accordance with the adopted Housing Element.” (City of La Cañada Flintridge, Letter
12 to Alexandra Hack, March 1, 2023.)

13 57. Respondent, in other words, decided Applicant could not submit an application using the
14 builder’s remedy.

15 58. Applicant filed an appeal from the City’s March 1 determination, which the City Council heard
16 on May 1, 2023.

17 59. On April 28, 2023, Petitioner filed written comment with the Council urging it to grant the
18 appeal. (See Exhibit 2.)

19 60. This comment explained that the project was eligible for protections under the builder’s remedy;
20 that Respondent was out of compliance with the Housing Element Law; and that Respondent therefore
21 could not legally disapprove the project on the grounds of its inconsistency with Respondent’s
22 development standards.

23 61. Upon information and belief, Respondent disputed and continues to dispute each of these
24 contentions.

25 62. On May 1, 2023, the Council denied the appeal, and with it, the project.

26 63. No further avenue for appeal was provided.
27
28

1 64. Subsequently, HCD issued a Notice of Violation to Respondent concerning the May 1, 2023
2 Council vote to disapprove the project. (*See* California Department of Housing and Community
3 Development, Letter to Mark Alexander, June 8, 2023.)

4 65. The Notice of Violation confirmed that the May 1, 2023 Council vote violated the HAA and the
5 Housing Element Law. It explained: (i) the City had not adopted a compliant housing element on
6 November 10, 2022, when Applicant submitted its preliminary application; (ii) the project was entitled
7 to rely on the builder’s remedy; (iii) Applicant’s November 10, 2022 preliminary application preserved
8 its right to pursue the project under the builder’s remedy regardless of later changes in the City’s
9 housing element compliance status; and (iv) the May 1, 2023 Council vote “effectively denied the
10 Project as proposed in violation of the HAA.” (*Id.*)

11 C. Respondent Refuses to Change Its Position on the Builder’s Remedy

12 66. After voting to disapprove the project, Respondent sent Applicant a letter on May 26, 2023
13 stating the application was complete, after all. (City of La Cañada Flintridge, Letter to Alexandra Hack,
14 May 26, 2023.)

15 67. One month later, however, Respondent sent a follow-up letter reiterating its position that its
16 housing element was in substantial compliance when the application was submitted. (City of La Cañada
17 Flintridge, Letter to Alexandra Hack, June 24, 2023.) According to Respondents, the proposed
18 development did not comply with Respondent’s zoning and general plan because its density of 62
19 dwelling units per acre is higher than the density specified in Respondent’s zoning ordinance and
20 general plan; because the proposed development did not include as much outdoor space as Respondents
21 required; and because it did not employ the architectural styles preferred by Respondent’s zoning
22 ordinance and general plan, instead opting for a clean contemporary look.

23 68. Respondent made clear, in this letter, that it believed the project’s inconsistencies with the
24 zoning code and general plan were grounds for denying the application, and the builder’s remedy did not
25 apply.

26 69. As explained above, Respondent did not have a substantially compliant housing element when
27 Applicant submitted its pre-application for the builder’s remedy project on November 10, 2022.
28

1 70. Nor did Respondent have a substantially compliant housing element when Applicant submitted
2 its builder's remedy development application on January 13, 2023.

3 71. Applicant was and is entitled to rely on the builder's remedy. Respondent erred in asserting
4 otherwise and in disapproving the application.

5 **FIRST CAUSE OF ACTION**
6 **(Writ of Administrative Mandate under the Housing Accountability Act – Code of Civ. Proc.**
7 **§ 1094.5; Gov. Code § 65589.5)**

8 72. Petitioner realleges and incorporates by reference the allegations set forth above.

9 73. As of November 10, 2022, when Applicant submitted its complete preliminary application for
10 the project, Respondent City of La Cañada Flintridge had not adopted a housing element that
11 substantially complied with state law.

12 74. This preliminary application sought a conditional use permit, tentative tract map, and tree
13 removal permit for a low-income housing development project, as defined by the HAA.

14 75. Applicant subsequently submitted a full development application for the same project on January
15 13, 2023.

16 76. Respondent took final action to disapprove the application on May 1, 2023, when the City
17 Council voted to deny Applicant's appeal of Respondent's determination that Government Code section
18 65589.5, subdivision (d)(5), (the builder's remedy) did not apply to the project.

19 77. Respondent's disapproval constitutes a prejudicial abuse of discretion in that Respondent did not
20 proceed as required by law. The HAA, Government Code section 65589.5, subdivision (d)(5), requires
21 Respondent to approve the application without regard to its compliance with Respondent's zoning
22 ordinance or general plan. The HAA further prohibits Respondent from disapproving the project except
23 in narrow circumstances, which Respondent did not and could not contend were applicable here (*id.* at
24 subd. (d)(3)-(4)), or if Respondent made specific findings regarding health and safety, which
25 Respondent did not and could not make (*id.* at subs. (d)(2), (j)(1)).

26 78. Petitioner therefore requests that this Court issue a writ of mandate setting aside Respondent's
27 May 1 disapproval and compelling Respondent to approve the application or, in the alternative, to
28 process it in accordance with the law.

1 79. In this action, Respondent “bear[s] the burden of proof that its decision has conformed” to the
2 law. (Gov. Code § 65589.6; *see also* Gov. Code § 65589.5, subd. (i).)

3 80. Respondent must demonstrate its decision is supported by the preponderance of the evidence in
4 the record. (Gov. Code § 65589.5, subds. (d) [disapproval must be “based upon a preponderance of the
5 evidence in the record”], (i) [in “a court action which challenges the denial [...] the burden of proof shall
6 be on the local legislative body to show that its decision is [...] supported by a preponderance of the
7 evidence in the record”], (j)(1) [“When [...] the local agency proposes to disapprove the project [...], the
8 local agency shall base its decision [...] upon written findings supported by a preponderance of the
9 evidence on the record”].)

10 81. Petitioner has satisfied all prerequisites for filing this action and has exhausted all available
11 administrative remedies to the extent required by law.

12 82. Petitioner submitted written comments to the City Council prior to Respondent’s disapproval of
13 the project on May 1, 2023. These comments detailed the laws governing Respondent’s treatment of the
14 project and explained why disapproval was illegal.

15 83. Petitioner has a direct and substantial interest in ensuring Respondent performs its legal duties as
16 described herein, and a clear, present, and beneficial right to that performance.

17 84. Petitioner lacks a plain, speedy, or adequate remedy in the ordinary course of law. Writ relief is
18 therefore necessary.

19 85. Petitioner is entitled to attorneys’ fees and costs of suit. (Code of Civ. Proc. § 1021.5 [attorneys’
20 fees]; Gov. Code § 800 [attorneys’ fees]; Code of Civ Proc. §§ 1029, 1032 [costs]; Gov. Code
21 § 65589.5, subds. (k)(1)(A)(ii), (k)(2) [both].)

22 **SECOND CAUSE OF ACTION**
23 **(Declaratory Relief – Code of Civ. Proc. § 1060)**

24 86. Petitioner realleges and incorporates by reference the allegations set forth above.

25 87. An actual controversy has arisen and now exists between Petitioner and Respondent concerning
26 Respondent’s duties under the law. As described above, Petitioner contends that Respondent has not
27 had a housing element in substantial compliance with the Housing Element Law from October 16, 2021
28 on. Petitioner contends the HAA therefore requires Respondent to approve the application without

1 regard to its compliance with Respondent’s zoning ordinance or general plan. Petitioner further
2 contends the HAA prohibits Respondent from disapproving the project in the manner that it did.

3 88. Upon information and belief, Respondent contends otherwise on all points.

4 89. A judicial declaration of Respondent’s duties under the law is therefore necessary, and Petitioner
5 requests such a declaration from this Court.

6 **PRAYER**

7 WHEREFORE, Petitioner respectfully prays:

- 8 1. For a writ of mandate setting aside Respondent’s decision, on May 1, 2023, to disapprove an
9 application for a housing development project at 600 Foothill Boulevard, and compelling
10 Respondent to approve the application or, in the alternative, to process it in accordance with the
11 law;
- 12 2. For a declaratory judgment declaring Respondent did not have a housing element that
13 substantially complied with state law from October 16, 2021 on, and Respondent therefore
14 cannot disapprove the application at issue in reliance on Government Code section 65589.5,
15 subdivision (d)(5);
- 16 3. For fines against Respondent pursuant to Government Code section 65589.5, subdivisions (k)(1)
17 and (l);
- 18 4. For costs of suit pursuant to Code of Civil Procedure sections 1029 and/or 1032, and/or
19 Government Code section 65589.5, subdivisions (k)(1)(A)(ii) and (k)(2);
- 20 5. For attorneys’ fees pursuant to Code of Civil Procedure section 1021.5, and/or Government Code
21 section 800 and/or section 65589.5, subdivisions (k)(1)(A)(ii) and (k)(2);
- 22 6. For such other and further relief as the Court deems just and proper.

23
24 Dated: July 24, 2023

CALIFORNIA HOUSING DEFENSE FUND

25
26 
27 _____
28 Nicholas Eckenwiler, Attorney for Petitioner

VERIFICATION

I, Dylan S. Casey, declare:

I am the Executive Director of the California Housing Defense Fund, the Petitioner in the above-captioned matter. I have read the foregoing Verified Petition for a Writ of Mandate and know the contents thereof to be true of my own knowledge, except as to those matters alleged on information and belief, and as to those matters I believe them to be true.

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

Executed this 26th day of July, 2023, at Alameda, California.

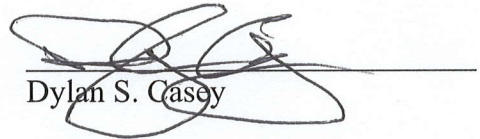

Dylan S. Casey

EXHIBIT 1



March 14, 2023

Susan Koleda, Director
Community Development Department
City of La Cañada Flintridge
One Civic Center Drive
La Cañada Flintridge, CA 91011

By Email: skoleda@lcf.ca.gov
CC: aguerra@awattorneys.com

Dear Susan Koleda,

The California Housing Defense Fund (“CalHDF”) submits this letter in support of 600 Foothill Owner, LP’s (“the applicant”) appeal regarding the proposed housing development at 600 Foothill Boulevard. The City’s stated rationale for denying the project – namely, that La Cañada Flintridge had a compliant housing element at the time the application was submitted – runs afoul of state law. CalHDF therefore urges the City to grant the appeal and approve the application.

Prior to submitting the application at issue here, the applicant sought approval for a housing development consistent with the City’s general plan. The City rejected that proposal. The applicant, consequently, looked for other options. In view of the City’s failure to adopt a compliant 6th cycle housing element, the applicant chose to build a housing development project under Government Code section 65589.5(d)(5), commonly known as the “builder’s remedy.” The builder’s remedy grants special protections to proposed housing development projects that reserve at least twenty percent of their dwelling units for low-income renters. A city may not disapprove such a housing project on the grounds that it violates the city’s general plan or zoning code unless the city has adopted a housing element that complies with state law.

State law imposes certain requirements that a city’s housing element must meet before it can be deemed compliant. First, cities must update the housing element to their general plan every eight years. Gov. Code § 65588, subd. (e). A failure to meet this deadline constitutes noncompliance. Second, before adopting an updated housing element, a city must submit a draft of the proposed housing element to the Department of Housing and

Community Development (“HCD”). Gov. Code § 65585. HCD reviews the draft to determine whether it complies with state law. *Id.* at subd. (d).

The deadline for La Cañada Flintridge to adopt a compliant housing element for this review cycle (the sixth cycle) was October 15, 2021. The City missed this deadline. Indeed, the City did not adopt a housing element it claimed met the requirements of state law until February 21, 2023. And even then, it had not received a determination of compliance from HCD.

The applicant submitted a preliminary application for its proposed builder’s remedy project on November 10, 2022, well before the City’s February adoption. The City nonetheless rejected the application for non-compliance with the City’s zoning code and general plan.

In rejecting the application, the City pointed to language in the February adoption resolution purporting to set the date when its housing element came into substantial compliance at October 4, 2022, when the City adopted a previous housing element draft. This, of course, is absurd. A city cannot simply declare its housing element is both adopted and compliant on a date four months before it adopted that housing element. If it could, the entire statutory framework governing housing element compliance would make no sense. Deadlines are deadlines, and the City’s failure to adopt a compliant housing element before the application at issue here was submitted is not something that can be corrected after the fact.

Even setting aside the backdating issue, La Cañada Flintridge stands on extremely tenuous footing in declaring its housing element compliant. HCD has never granted the City a determination of compliance under Government Code section 65585(d). The City tried to proclaim its own determination to that effect when it adopted the housing element on February 21, but this effort was too feeble to support any serious claim that it succeeded. Like compliance with the deadline, compliance with state law’s substantive requirements cannot simply be declared.

Without a compliant housing element, the City cannot disapprove the application at issue here on the grounds that it oversteps the City’s development standards. Any final determination that the application cannot move forward constitutes a disapproval under the HAA. CalHDF hopes the City will recognize this and grant the applicant’s appeal, since to do otherwise would amount to a disapproval of the project. In the event the City does not grant the appeal, CalHDF is prepared to take action to enforce the law.

CalHDF is a 501(c)(3) non-profit whose mission includes advocating for increased access to housing for Californians at all income levels. You may learn more about CalHDF at www.calhdf.org.

Sincerely,

A handwritten signature in blue ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

Dylan S. Casey
Executive Director

EXHIBIT 2



April 28, 2023

**City of La Cañada Flintridge
One Civic Center Drive
La Cañada Flintridge, CA 91011**

By Email: citycouncil@lcf.ca.gov; keich@lcf.ca.gov; rgunter@lcf.ca.gov; mdavitt@lcf.ca.gov; kbowman@lcf.ca.gov; twalker@lcf.ca.gov

CC: aguerra@awattorneys.com; skoleda@lcf.ca.gov

Dear La Cañada Flintridge City Council,

The California Housing Defense Fund (“CalHDF”) submits this letter in support of 600 Foothill Owner, LP’s (“the applicant”) appeal regarding the proposed housing development at 600 Foothill Boulevard. The City’s stated rationale for denying the project – namely, that La Cañada Flintridge had a compliant housing element at the time the application was submitted – runs afoul of state law. CalHDF therefore urges the City to grant the appeal and approve the application.

Prior to submitting the application at issue here, the applicant sought approval for a housing development consistent with the City’s general plan. The City rejected that proposal. The applicant, consequently, looked for other options. In view of the City’s failure to adopt a compliant 6th cycle housing element, the applicant chose to build a housing development project under Government Code section 65589.5(d)(5), commonly known as the “builder’s remedy.” The builder’s remedy grants special protections to proposed housing development projects that reserve at least twenty percent of their dwelling units for low-income renters. A city may not disapprove such a housing project on the grounds that it violates the city’s general plan or zoning code unless the city has adopted a housing element that complies with state law.

State law imposes certain requirements that a city’s housing element must meet before it can be deemed compliant. First, cities must update the housing element to their general plan every eight years. Gov. Code § 65588, subd. (e). A failure to meet this deadline constitutes noncompliance. Second, before adopting an updated housing element, a city must submit a draft of the proposed housing element to the Department of Housing and Community Development (“HCD”). Gov. Code § 65585. HCD reviews the draft to determine whether it complies with state law. *Id.* at subd. (d).

360 Grand Ave #323, Oakland 94610
hi@calhdf.org

The deadline for La Cañada Flintridge to adopt a compliant housing element for this review cycle (the sixth cycle) was October 15, 2021. The City missed this deadline. Indeed, the City did not adopt a housing element it claimed met the requirements of state law until February 21, 2023. And even then, it had not received a determination of compliance from HCD.

The applicant submitted a preliminary application for its proposed builder's remedy project on November 10, 2022, well before the City's February adoption. The City nonetheless rejected the application for non-compliance with the City's zoning code and general plan.

In rejecting the application, the City pointed to language in the February adoption resolution purporting to set the date when its housing element came into substantial compliance at October 4, 2022, when the City adopted a previous housing element draft. This, of course, is absurd. A city cannot simply declare its housing element is both adopted and compliant on a date four months before it adopted that housing element. If it could, the entire statutory framework governing housing element compliance would make no sense. Deadlines are deadlines, and the City's failure to adopt a compliant housing element before the application at issue here was submitted is not something that can be corrected after the fact.

HCD confirmed this is the correct reading of the law when it sent the City a letter on April 24, 2023, flatly rejecting the City's effort to set the date of substantial compliance at October 4, 2022. HCD wrote: "A local jurisdiction cannot 'backdate' compliance to the date of adoption of a housing element. Moreover, as stated above, the October 4, 2022 adopted element did not substantially comply with State Housing Element Law." This letter also found that the most recent updates to the housing element fall short of compliance, and the city remains without an adopted, substantially compliant housing element.

Even setting aside the backdating issue, La Cañada Flintridge stands on extremely tenuous footing in declaring its housing element compliant. HCD has never granted the City a determination of compliance under Government Code section 65585(d) (and, again, its April 24 letter to the City unambiguously declares the housing element adopted on October 4, 2022 is non-compliant). The City tried to proclaim its own determination to that effect when it adopted the housing element on February 21, but this effort was too feeble to support any serious claim that it succeeded (and, again, HCD's April 24 letter makes this clear). Like compliance with the deadline, compliance with state law's substantive requirements cannot simply be declared.

Without a compliant housing element, the City cannot disapprove the application at issue here on the grounds that it oversteps the City's development standards. Any final determination that the application cannot move forward constitutes a disapproval under the HAA. CalHDF hopes the City will recognize this and grant the applicant's appeal, since to do otherwise would amount to a disapproval of the project. In the event the City does not grant the appeal, CalHDF is prepared to take action to enforce the law.

CalHDF is a 501(c)(3) non-profit whose mission includes advocating for increased access to housing for Californians at all income levels. You may learn more about CalHDF at www.calhdf.org.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Dylan S. Casey', with a long horizontal flourish extending to the right.

Dylan S. Casey
Executive Director

A handwritten signature in blue ink, appearing to read 'Courtney Welch', with a stylized, cursive script.

Courtney Welch
CalHDF Director of Investigations and Enforcement