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*Exempt from Filing Fees
Government Code § 6103*

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF LOS ANGELES

13 **CALIFORNIA HOUSING DEFENSE**
14 **FUND,**
15 Petitioner and Plaintiff,
16
17 v.
18 **CITY OF LA CAÑADA FLINTRIDGE,**
19 Respondent and Defendant,
20 **600 FOOTHILL OWNER, LP,**
21 Real Party in Interest,
22 **PEOPLE OF THE STATE OF**
23 **CALIFORNIA, EX REL. ROB BONTA;**
24 **CALIFORNIA DEPARTMENT OF**
HOUSING AND COMMUNITY
DEVELOPMENT,
25 Petitioners-Intervenors

Case No. 23STCP02614

**[PROPOSED] PETITION FOR WRIT OF
MANDATE AND COMPLAINT FOR
DECLARATORY RELIEF**

(Code of Civ. Proc., §§ 1085, 1060; Gov.
Code § 65589.5)

1 By this **[PROPOSED] PETITION FOR WRIT OF MANDATE AND COMPLAINT**
2 **FOR DECLARATORY RELIEF**, Petitioners-Intervenors the People of the State of California,
3 acting by and through Attorney General Rob Bonta, and the California Department of Housing
4 and Community Development (“HCD”) (collectively, “the State” or “Petitioners-Intervenors”)
5 seek a writ of mandate, pursuant to Code of Civil Procedure section 1085, to set aside the
6 decision of Respondent-Defendant City of La Cañada Flintridge (“Respondent”) to deny the at-
7 issue project application and process the application in accordance with the law. Petitioners-
8 Intervenors also seek a declaratory judgment, pursuant to Code of Civil Procedure section 1060,
9 that Respondent did not have a housing element that substantially complied with state law from
10 October 16, 2021 through November 17, 2023, including November 14, 2022, the operative date
11 for the at-issue preliminary project application in this case, and that Respondent is without the
12 legal authority to declare that its own housing element “substantially complies” with state law.
13 Further, the State seeks a declaratory judgment that, due to the lack of a substantially compliant
14 housing element, Respondent is legally compelled to process the at-issue project application.
15 Finally, the State requests the Court award all statutory fines, levies, and penalties and costs and
16 attorneys’ fees, as appropriate. (Gov. Code, § 65585, subd. (l).)

17 In support of the aforementioned claims, the State alleges:

18 INTRODUCTION

19 1. In response to California’s housing shortage crisis, the Legislature passed several
20 laws to remove barriers to the development of a wide-range of housing stock, including
21 affordable and mixed-income housing. This lawfully enacted statutory scheme serves in part to
22 provide all interested stakeholders—including residents, businesses, and housing developers—
23 notice and clarity regarding the status of housing across the state.

24 2. Further, this statutory scheme addresses “[t]he excessive cost of the state’s housing
25 supply” which “is partially caused by activities and policies of many local governments that limit
26 the approval of housing, increase the cost of land for housing, and require that high fees and
27 exactions be paid by producers of housing.” (Gov. Code, § 65589.5, subd. (a)(2)(A).)

1 3. Two specific bodies of housing law are at-issue in this matter: Housing Element Law
2 (Gov. Code, §§ 65580 et seq.) and the Housing Accountability Act (“HAA”) (Gov. Code, §
3 65589.5). These two laws interact, and frame this case.

4 4. Housing Element Law requires that a local government submit draft housing elements
5 and revisions to HCD, prior to the timely adoption of a draft housing element that “substantially
6 complies” with the law. (Gov. Code, § 65585, subds. (b)(1); (e).) Housing Element Law vests
7 with HCD alone the power to determine whether a “draft element or draft amendment
8 substantially complies with” the law. (Gov. Code, § 65585, subds. (d), (f).)

9 5. If HCD finds the draft element is not in compliance, the local government must either
10 change the draft element to conform to HCD’s findings, or adopt the draft element without
11 changes and explain why it believes that draft element substantially complies despite HCD’s
12 findings. (Gov. Code, § 65585, subd (f).)

13 6. Once a local government has adopted a draft housing element, it must again submit
14 the adopted element to HCD for HCD’s final review and findings of compliance. (Gov. Code, §
15 subds. (g), (h).) HCD, and not the local government, determines whether the adopted housing
16 element complies with the law.

17 7. A local government is therefore without authority under Housing Element Law to
18 declare a date at which a draft housing element, adopted or not, “substantially complies” with the
19 law. The date at which a housing element is deemed to be in substantial compliance with Housing
20 Element Law is the date at which HCD submits a finding stating that an adopted element
21 substantially complies. (Gov. Code, § 65585, subd. (h).)

22 8. If a local government fails to substantially comply with Housing Element Law, HCD
23 may revoke any certification of a housing element. (Gov. Code, § 65585, subd. (i)(1)(B).)

24 9. The HAA provides a remedy for interested stakeholders to continue with the
25 development of affordable housing projects in jurisdictions that have failed to comply with the
26 statutory deadlines set forth in Housing Element Law. Specifically, subdivision (d)(5) of the
27 HAA, colloquially known as the “Builder’s Remedy,” allows a local agency to disapprove an
28 affordable housing project that “is inconsistent with both the jurisdiction’s zoning ordinance and

1 general plan use designation as specified in any element of the general plan” only ***if*** the
2 jurisdiction ***has*** adopted a housing element “that is in substantial compliance” with Housing
3 Element Law. (Gov. Code, § 65589.5, subd. (d)(5).)

4 10. If a jurisdiction does not have a substantially compliant housing element at the time a
5 complete preliminary application for a qualifying development is submitted, the applicant is
6 vested with the right to develop the housing project in accordance with the ordinances, policies,
7 and standards in effect when a preliminary application is submitted. (Gov. Code, § 65589.5, subd.
8 (o)(1).)

9 11. This matter involves a local jurisdiction which repeatedly failed to timely comply
10 with Housing Element Law in the drafting and adoption of a substantially compliant housing
11 element, and the valid submission of a preliminary application which benefits from the Builder’s
12 Remedy. Respondent attempts to evade its statutorily mandated duties by denying a valid
13 Builder’s Remedy project, in violation of both Housing Element Law and the HAA, and in
14 flagrant disregard of the Legislature’s objectives and goals in addressing California’s housing
15 crisis.

16 12. Consequently, Petitioners-Intervenors seek a writ of mandate requiring Respondent to
17 process the application pursuant to the HAA’s Builder’s Remedy; a declaratory judgment that
18 Respondent failed to have adopted a housing element in substantial compliance with Housing
19 Element Law at the time of submission of a valid and complete preliminary application for a
20 housing development project, and, therefore, Respondent must process the application; and a
21 declaratory judgment that Respondent is without legal authority to declare that its own housing
22 element “substantially complies” with state law.

23 **PARTIES**

24 13. The Attorney General, as the chief law enforcement officer of the State of California,
25 brings this action under his broad independent powers to enforce state laws, and on behalf of
26 HCD. (Cal. Const., Art. V, section 13; Gov. Code, § 65585, subd. (j).)

27 14. HCD is a public agency established under the laws of the State of California. HCD is
28 the public agency charged with oversight and enforcement of state housing laws and related

1 statutes, which together, provide a framework for local housing needs, permitting decisions, and
2 other housing-related land use decisions.

3 15. The State is informed and believes, on that basis alleged, that Petitioner-Plaintiff the
4 California Housing Defense Fund (“CalHDF”) is a California nonprofit corporation in good
5 standing in this state. CalHDF was formed, in part, to advocate for the construction of housing at
6 all income levels throughout the state, including in jurisdictions such as the Respondent city, to
7 meet the needs of California residents.

8 16. Respondent-Defendant City of La Cañada Flintridge is and was at all times
9 mentioned herein a municipal corporation organized and existing under the laws of the State of
10 California. The City of La Cañada Flintridge is a legal entity with the capacity to sue and be sued.

11 17. The State is informed and believes, on that basis alleged, that Real Party in Interest
12 600 Foothill Owner, LP (“Foothill Owner”), is a California limited partnership. It is the developer
13 and applicant seeking to build the project at issue, which is subject to the HAA Builder’s
14 Remedy.

15 **JURISDICTION AND VENUE**

16 18. This Court has subject matter jurisdiction over the state law claims asserted in this
17 action pursuant to Code of Civil Procedure section 1085 and Government Code section 65589.5.

18 19. This Court has personal jurisdiction over Respondent pursuant to Code of Civil
19 Procedure section 410.10.

20 20. Venue properly lies with this Court because Respondent is a city located in Los
21 Angeles County. (See Code Civ. Proc., § 394.)

22 21. This action is timely because this Petition and Complaint were filed and served within
23 three (3) years of the effective date of Respondent’s final action denying the application. (See
24 Gov. Code, § 65589.5, subd. (p) [citing Code Civ. Proc., § 338].)

25 22. Petitioners-Intervenors have a clear, present, and beneficial right in Respondent’s
26 compliance with the non-discretionary duties imposed by state law, as set forth in this Petition
27 and Complaint.

28 23. Petitioners-Intervenors have no other plain, speedy, and adequate remedy at law.

1 **GENERAL ALLEGATIONS**

2 **I. HCD ENFORCES STATE HOUSING LAWS.**

3 24. HCD is the state agency responsible for enforcing housing laws in California, and has
4 “primary responsibility for development and implementation of housing policy.” (See, e.g.,
5 Health & Saf. Code, § 50152; Gov. Code, § 65585, subd. (j), (j)(1), (j)(4), and (j)(6).) HCD’s
6 responsibilities include, but are not limited to, advising cities and the public on state housing law
7 and policy, developing guidelines on housing elements, reviewing each local government’s draft
8 and final housing elements, and determining whether each housing element substantially
9 complies with Housing Element Law. (Health & Saf. Code, §§ 50456, 50459, 50464; Gov. Code,
10 § 65585, subds. (a).)

11 25. HCD holds a critical role in enforcing local governments’ compliance with state
12 housing laws. When a local government is unwilling to comply with state law, HCD may refer
13 the matter to the Attorney General to bring a civil action to remedy any violations on HCD’s
14 behalf. (Gov. Code, § 65585, subds. (j), (k) and (l).) HCD’s ability to enforce state housing laws
15 through litigation against local governments, and referral to the Attorney General, is crucial to
16 HCD’s enforcement authority.

17 **II. RESPONDENT VIOLATED HOUSING ELEMENT LAW BETWEEN OCTOBER 2021 AND**
18 **NOVEMBER 2023.**

19 26. Respondent’s repeated failure to comply with Housing Element Law dates to October
20 15, 2021, when Respondent failed to meet its deadline to adopt a housing element in substantial
21 compliance with Housing Element Law.

22 27. Pursuant to Housing Element Law, a municipality is required to pass, as part of its
23 general plan, a housing element that makes adequate provisions for the housing needs of all
24 income groups. The housing element statutes require a local jurisdiction to first submit a draft
25 housing element to HCD before a final, compliant housing element is adopted by the
26 jurisdiction.¹

27 ¹ Before a city can adopt the draft element, its legislative body must consider HCD’s
28 findings (if any). If HCD finds that the draft element does not substantially comply with

1 28. HCD is responsible for reviewing draft elements for substantial compliance with
2 Housing Element Law, and timely reporting its written findings. HCD’s written findings include
3 its determination as to whether the draft element substantially complies with Housing Element
4 Law.

5 29. This matter began more than two years ago, when Respondent waited until October 6,
6 2021, to submit its initial draft housing element to HCD, just days before the October 15, 2021
7 deadline.

8 30. Then, on December 3, 2021, HCD informed Respondent in writing that the draft
9 housing element would require significant revisions in order to comply with Housing Element
10 Law.

11 31. Next, Respondent delayed for almost a year, until October 4, 2022, when it adopted a
12 revised draft housing element via a resolution which did not include the changes necessary to
13 address HCD’s findings, or include written findings explaining why Respondent believed the
14 draft element substantially complied with Housing Element Law, in violation of Government
15 Code section 65585, subdivision (f).

16 32. Then, on December 3, 2022, HCD sent Respondent a letter stating that the adopted
17 housing element was not in substantial compliance with Housing Element Law, including that the
18 adopted element failed to “affirmatively further fair housing” in accordance with applicable law,
19 and failed to include an inventory of land suitable and available for residential development in a
20 manner consistent with the applicable Regional Housing Needs Allocation (“RHNA”) mandate.

21 33. Subsequently, on February 21, 2023, Respondent adopted another revised housing
22 element that adequately addressed HCD’s deficiency findings, but improperly concluded that the

23 _____
24 California’s Housing Element Law, the city’s legislative body must either: (1) change the draft
25 element to bring it into substantial compliance; or (2) adopt the draft element without changes,
26 but include written findings in its resolution of adoption that explain the legislative body’s
27 determination that the draft element is in substantial compliance despite HCD’s findings. (Gov.
28 Code, § 65585, subd. (f).)

As soon as the city adopts its element, it must submit a copy to HCD. HCD then reviews
the adopted element and reports its findings to the city. If a city fails to submit a substantially
compliant housing element within one year of the statutory deadline, HCD cannot certify that
city’s substantial compliance until all required rezones are completed. (Gov. Code, §§ 65588,
subd. (e)(4)(C)(iii), 65585, subd. (f).)

1 prior and subsequent housing element was in substantial compliance with Housing Element Law,
2 in effect “self-certifying” its housing element. However, a municipality has no authority to self-
3 certify that its own adopted housing element is in substantial compliance with state law.

4 34. Per statutory authority, HCD, and not the local government, determines whether the
5 adopted housing element complies with the law. HCD is responsible for reviewing draft elements
6 for substantial compliance with Housing Element Law, and timely reporting its written findings.
7 (Gov. Code, §§ 65585, subds (b)-(d).) In those findings, HCD “determine[s]” whether the draft
8 element substantially complies with Housing Element Law. (Gov. Code, §§ 65585 (d).) If a local
9 government disagrees with HCD’s findings that a draft element does not substantially comply, it
10 may explain why it “believes” its draft element substantially complies despite HCD’s findings.
11 Gov. Code, §§ 65585 (f)(2).) But, ultimately, the adopted element goes back to HCD for review
12 of whether the adopted element substantially complies with the law. Gov. Code, §§ 65585 (h).)
13 The fact that HCD makes the final determination as to housing element compliance is bolstered
14 by HCD’s authority to, at any time a city violates state housing element law, revoke a previous
15 compliance determination. (See Gov. Code, § 65585, subd. (i)(1)(B).)

16 35. On April 24, 2023, HCD found that the February 2023 housing element was not in
17 substantial compliance because, although it addressed HCD’s deficiency findings, it was adopted
18 more than one year past the statutory due date of October 15, 2021, such that Respondent could
19 not be deemed in substantial compliance until it completed required rezones. (Gov. Code, §§
20 65588, subd. (e)(4)(C)(iii), 65585, subd. (f).)

21 36. As stated by HCD in its November 17, 2023 letter to Respondent, attached as Exhibit
22 A, Respondent did not have a housing element that was in substantial compliance with state law
23 until November 17, 2023, after it completed required rezones.²

24
25
26
27
28 ² HCD letter to Dr. Daniel Jordan, La Cañada Flintridge City Manager, “La Cañada
Flintridge’s 6th Cycle (2021-2029) Adopted Housing Element,” (Nov. 17, 2023).

1 **III. RESPONDENT DENIED A VALID BUILDER’S REMEDY APPLICATION, VIOLATING THE HAA.**

2 37. Both CalHDF and Foothill Owner’s interests in this matter flow from Respondent’s
3 failure to substantially comply with Housing Element Law and the subsequent refusal to process a
4 “Builder’s Remedy” permit in violation of the HAA.

5 38. As explained above, the Builder’s Remedy allows a local agency to disapprove an
6 affordable housing project that “is inconsistent with both the jurisdiction’s zoning ordinance and
7 general plan use designation as specified in any element of the general plan” only ***if*** the
8 jurisdiction ***has*** adopted a housing element “that is in substantial compliance” with Housing
9 Element Law. (Gov. Code, § 65589.5, subd. (d)(5).)

10 39. As set forth above, Respondent ***did not have*** a housing element certified by HCD to
11 be in substantial compliance with Housing Element Law at the time Foothill Owner submitted the
12 at-issue preliminary application on November 14, 2022, and in fact would not have a substantially
13 compliant housing element until a year later, on November 17, 2023. Accordingly, the Builder’s
14 Remedy provides that Respondent ***could not*** deny an affordable housing project merely because
15 the project was inconsistent with its zoning ordinances or general plan at the time of application.

16 40. The at-issue Foothill Owner application concerns the redevelopment of a former
17 Christian Science Reading Room in Respondent’s boundaries located at 600 Foothill Boulevard
18 to a mixed-use project with 80 mixed-income residential dwelling units, of which 20 percent (16
19 units) are affordable to lower-income units (“Foothill Project”).

20 41. Foothill Owner submitted a preliminary application for the project to Respondent on
21 November 14, 2022, specifically noting that, because the city had not adopted a substantially
22 compliant housing element at the time of application, it could not lawfully deny the project based
23 on inconsistency with zoning ordinances or the general plan.

24 42. The entitlement process continued, and on January 13, 2023, Foothill Owner
25 submitted a formal application for the Foothill Project.

26 43. Then, on February 10, 2023, Respondent issued an incompleteness determination in
27 response to the formal application, identifying alleged deficiencies in the project and requesting
28

1 additional details regarding the site plan, floor plans, landscape plans, elevations, and grading
2 plans, and requiring supporting easement documentation and a density bonus application.

3 44. On March 1, 2023, Respondent issued a second incompleteness determination,
4 asserting that the Builder’s Remedy did not apply to the Foothill Project.

5 45. Foothill Owner timely appealed the second incompleteness determination on March
6 9, 2023, and an appeal hearing took place on May 1, 2023. Respondent’s city council
7 unanimously denied the appeal.³

8 46. HCD issued a Notice of Violation (“NOV”) to Respondent on June 8, 2023, attached
9 as Exhibit B.⁴ The NOV stated that Respondent’s denial of Foothill Owner’s March 9, 2023
10 appeal constituted a violation of Housing Element Law and the HAA.

11 47. Specifically, HCD concluded that Respondent “cannot ‘backdate’ its housing element
12 compliance date to an earlier date so as to avoid approving a Builder’s Remedy application” and
13 that the adopted housing element “did not substantially comply with State Housing Element Law,
14 regardless of any declaration by the City.”

15 **FIRST CAUSE OF ACTION**
16 **(Writ of Administrative Mandate under the Housing Accountability Act—Code of Civ.**
17 **Proc. § 1085; Gov. Code § 65589.5)**

18 48. Petitioners-Intervenors reallege and incorporate by reference the allegations set forth
19 above.

20 49. As of November 14, 2022, when Foothill Owner submitted its complete preliminary
21 application for the Foothill Project, Respondent had not adopted a housing element that
22 substantially complied with state law.

23
24 ³ Foothill Owner also submitted a supplemental response to the first incompleteness
25 determination on April 28, 2023. Then, on May 26, 2023, the city council determined that certain
26 aspects of Foothill Owner’s application were complete. On June 24, 2023, Respondent sent
27 Foothill Owner a letter stating that its position remains that it had a compliant housing element as
28 of October 4, 2022, and that the Foothill Project is therefore inconsistent with applicable zoning
regulations.

⁴ HCD letter to Mark R. Alexander, La Cañada Flintridge City Manager, “City of La
Cañada Flintridge Denial of 600 Foothill Boulevard Housing Project—Notice of Violation,”
(June 8, 2023).

1 50. Respondent took final action to disapprove the application on May 1, 2023, when the
2 city council voted to deny Foothill Owner’s appeal of Respondent’s determination that
3 Government Code section 65589.5, subdivision (d)(5), the HAA’s Builder’s Remedy, did not
4 apply to the project.

5 51. Respondent’s denial qualifies as a prejudicial abuse of discretion, because
6 Respondent did not follow the letter and text of state law. Government Code section 65589.5,
7 subdivision (d)(5), the HAA’s Builder’s Remedy, requires that Respondent process Foothill
8 Owner’s qualifying application without regard to the application’s compliance with Respondent’s
9 zoning ordinance or general plan at the time because, at the time of the preliminary application,
10 Respondent did not have a housing element that substantially complied with Housing Element
11 Law as determined by HCD.

12 52. Petitioners-Intervenors request that this Court issue a writ of mandate setting aside
13 Respondent’s May 1, 2023 disapproval and compel Respondent to process Foothill Owner’s
14 application in accordance with the law.

15 53. Respondent “bear[s] the burden of proof that its decision has conformed” to the law.
16 (Gov. Code § 65589.6; see also Gov. Code § 65589.5, subd. (i).)

17 54. Respondent must demonstrate its decision is supported by the preponderance of the
18 evidence in the record. (Gov. Code § 65589.5, subs. (d) [disapproval must be “based upon a
19 preponderance of the evidence in the record”], (i) [in “a court action which challenges the denial
20 [...] the burden of proof shall be on the local legislative body to show that its decision is [...] supported by a preponderance of the evidence in the record”], (j)(1) [“When [...] the local agency
21 proposes to disapprove the project [...], the local agency shall base its decision [...] upon written
22 findings supported by a preponderance of the evidence on the record”].)

23 55. Petitioners-Intervenors have satisfied all prerequisites for filing this action and have
24 exhausted all available administrative remedies to the extent required by law.

25 56. Petitioners-Intervenors issued a NOV to Respondent on June 8, 2023. The NOV
26 stated that Respondent’s denial of Foothill Owner’s March 9, 2023 appeal constituted a violation
27 of Housing Element Law and the HAA.
28

- 1 including the development of affordable housing units, and to compel Respondent to
2 process the application in accordance with state law;
- 3 2. For a declaratory judgment that Respondent did not have a housing element that
4 substantially complied with state law from October 16, 2021 through at least
5 November 17, 2023, including on November 14, 2022, when Foothill Owner
6 submitted a preliminary application for the Foothill Project, and that, therefore, the
7 HAA requires Respondent to process Foothill Owner’s application pursuant to the
8 Builder’s Remedy and prohibits Respondent from disapproving the project in the
9 manner it did at the May 1, 2023 hearing;
- 10 3. For a declaratory judgment that HCD alone can determine whether a housing element
11 substantially complies with state law;
- 12 4. For statutory fines, levies, and penalties. (Gov. Code, § 65585, subd. (l).);
- 13 5. For costs and attorneys’ fees; and
- 14 6. For any and all such other and further relief the Court deems just and proper.

15 Dated: December 12, 2023

Respectfully submitted,

16 ROB BONTA
17 Attorney General of California
18 CHRISTINA BULL ARNDT
19 DAVID PAI
20 Supervising Deputy Attorneys General

21 *Nina Lincoff*
22 _____
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24 Deputy Attorney General
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26 *People of the State of California, ex rel.*
27 *Attorney General Rob Bonta, California*
28 *Department of Housing and Community*
Development