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FRESNO COUNTY SUPERIOR COURT
By: K. Daves, Deputy

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CITY OF FRESNO, CITY COUNCIL OF THE
11 CITY OF FRESNO

12
13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **COUNTY OF FRESNO, CENTRAL DIVISION**

15 BUILDING INDUSTRY ASSOCIATION OF
FRESNO/MADERA COUNTIES, INC.;
16 GRANVILLE HOMES, INC; WATHEN
CASTANOS PETERSON HOMES, INC.; and
17 LENNAR HOMES OF CALIFORNIA, INC.,

Case No. 17CECG01669

**RESPONDENTS' STATEMENT OF
ISSUES AND OBJECTIONS TO
PETITIONERS' STATEMENT OF
ISSUES**

18 Petitioners and Plaintiffs,

19 v.

20 CITY OF FRESNO; CITY COUNCIL OF
THE CITY OF FRESNO; ALL PERSONS
21 INTERESTED IN THE VALIDITY OF (1)
THE FRESNO MUNICIPAL CODE AND
22 ARTICLE 4.5 OF CHAPTER 12 AND (2)
THE CITY OF FRESNO'S APPROVAL OF
23 A RESOLUTION, ON OR ABOUT APRIL 6,
24 2017, ENCOMPASSING THE 530TH
AMENDMENT TO THE MASTER FEE
25 RESOLUTION NO. 80-420 ADOPTING
26 WATER CAPACITY FEES UNDER THE
PUBLIC UTILITIES SECTION, AND (3)
27 ALL ACTS RELATING TO THE
ENVIRONMENTAL REVIEW OF SUCH
28 ACTIONS; and DOES 1 through 100,

ALESHIRE &
WYNDER LLP
ATTORNEYS AT LAW



1 inclusive,
2 Respondents and Defendants.
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5 Pursuant to Public Resources Code, section 21167.8(f), Respondents City of Fresno and City
6 of Fresno City Council (collectively "Respondents" or "City"), submit the following Statement of
7 Issues and Objections to Petitioners Granville Homes, Inc.'s; Wathen Castanos Peterson Homes,
8 Inc.'s Statement of Issues.

9 **STATEMENT OF ISSUES**

10 1. Respondents did not violate Cal. Constitution, art XIIC, Section 1 subd. (e); the
11 Proposed Fees are no greater than necessary to cover the reasonable costs of the governmental
12 activity; Respondents made findings that the Proposed Fees are no greater than necessary to cover the
13 reasonable costs of the governmental activity and supported such findings with substantial evidence in
14 the record.

15 2. Respondents did not violate Cal. Constitution, art XIIC, Section 1 subd. (e); the
16 Proposed Fees are allocated in a manner that bears a fair or reasonable relationship to the payor's
17 burdens on, or benefits received from, the governmental activity; Respondents made findings that the
18 Proposed Fees will be allocated in a manner that bears a fair or reasonable relationship to the payor's
19 burdens on, or benefits received from, the governmental activity and supported such findings with
20 substantial evidence in the record.

21 3. Respondents did not violate the California Constitution art. XIII A, Section 4; the
22 Proposed Fees are limited to the reasonable cost of providing the service for which the fees would be
23 charged; Respondents made findings that the Proposed Fees are limited to the reasonable cost of
24 providing the service for which the fees would be charged, and Respondents supported such findings
25 with substantial evidence in the record.

26 4. Respondents did not violate Section 50076 of the Government Code; the Proposed Fees
27 are limited to the reasonable cost of providing the service for which the fees are charged; Respondents
28 made findings the Proposed Fees are limited to the reasonable cost of providing the service for which





1 the fees would be charged, and Respondents supported such findings with substantial evidence in the
2 record.

3 5. Respondents did not violate Section 66013(a) of the Government Code. The Proposed
4 Fees do not exceed the estimated reasonable cost of providing the service for which the fee or charge
5 is imposed. Respondents made findings the Proposed Fees do not exceed the estimated reasonable
6 cost of providing the service for which the fee or charge is imposed, and supported such a finding with
7 substantial evidence in the record. Respondents were not required to submit the Proposed Fees to the
8 voters for approval by a two-thirds majority.

9 6. Respondents did not violate the California Constitution, art. XIII C, Section 1,
10 subdivision (e), art. XIII A, Section 4, and Section 66013(a) of the Government Code. Respondents
11 were not required to obtain approval from a two thirds majority of qualified voters.

12 7. Respondents did not violate the California Constitution, art. I, Section 19 in adopting
13 the Proposed Fees. They do not exceed the estimated reasonable cost of providing the service for
14 which they are charged.

15 8. Respondents did not violate the California Constitution, art. I, Section 7 by adopting
16 the Proposed Fees. They do not exceed the estimated reasonable cost of providing the service for
17 which they are charged.

18 9. Respondents did not prejudicially abuse their discretion in finding a constitutional
19 nexus exists between the amount of the Proposed Fees and the cost of specific infrastructure
20 improvements. This finding is supported by substantial evidence in the record.

21 10. Respondents did not abuse their discretion under the California Environmental Quality
22 Act (“CEQA”) and the CEQA Guidelines, 14 CCR, sections 15000 *et seq.* (“CEQA Guidelines”), with
23 regard to their proceedings and decisions with respect to whether there was a project under CEQA.
24 City’s findings were supported by substantial evidence in the record. If an activity lacks the potential
25 to cause a direct or reasonably foreseeable indirect change in the environment, it is not a “project”
26
27
28



1 subject to CEQA.¹ CEQA applies only to projects which have the potential for causing a significant
2 effect on the environment. (14 CCR § 15061(b)(3).) The fees do not have the potential to result in a
3 direct physical change in the environment, or a reasonably foreseeable indirect change in the
4 environment and are not a project. (Pub. Res. Code § 21065; 14 CCR § 15378(a).)

5 Further, the City found the capacity fees are intended to fund future projects, but the fees do
6 not *commit* the City to approve a particular project. A funding mechanism is not a commitment and
7 not a project under the CEQA Guidelines. (14 CCR § 15378(b)(4)[“The creation of government
8 funding mechanisms or other government fiscal activities, which do not involve any commitment to
9 any specific project which may result in a potentially significant physical impact on the environment”
10 is not a project under CEQA].)

11 Any projects or improvements funded by the capacity fees would be subject to future
12 environmental review under CEQA. Petitioners contend the reason for the fees is to fund construction
13 of surface water system improvements. However, courts have held these types of funding
14 mechanisms are not “projects.” For example, formation of a district to finance school’s anticipated
15 future needs due to population growth was not a project. (*Kaufman & Broad-South Bay v. Morgan*
16 *Hill Unif. Sch. Dist.* (1992) 9 Cal.App.4th 464, 476.) Adoption of a transactions and use tax ordinance
17 was not a project subject to the requirements of CEQA. (*Sustainable Transport. Advocates v. Santa*
18 *Barbara County Ass’n of Govts.* (2009) 221 Cal.App.4th 846.) A county’s application for funding
19 was not an “approval” of a project. (*City of Irvine v. County of Orange* (2013) 221 Cal. App. 4th 846,
20 859–860 (as modified Nov. 22, 2013).) A municipal services agreement did not commit a city
21 because the agreement was a mechanism for funding proposed projects, which may be modified based
22 on factors, including future CEQA review. (*Parchester Vill. Neighborhood Council v. City of*
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24

25 ¹ Pub. Res. Code, § 21080(a), (d). A “significant effect on the environment” is any “substantial, or
26 potentially substantial, adverse change in the environment.” Pub. Res. Code § 21068; 14 CCR §
27 15382; *Delaware Tetra Tech. v. County of San Bernardino* (4th Dist. 2016) 247 Cal. App. 4th 352, 363
28 (MOU that did “not commit the County to any activity with direct or indirect impacts on the
environment” was not a “project”); *Union of Medical Marijuana Patients v. City of Upland* (4th Dist.
2016) 245 Cal. App. 4th 1265.



1 *Richmond* (2010) 182 Cal. App. 4th 305, 316 (as modified Mar. 25, 2010); *Neighbors For Fair*
2 *Planning v. City & Cty. of San Francisco* (2013) 217 Cal. App. 4th 540, 549–553.)

3 Here, the capacity fees are a funding mechanism and will be used solely for the purpose of
4 providing water supply to new developments. The City did not commit to construct any particular
5 project or facility. The Fee Study used capital improvement plans to develop a reasonable estimate of
6 the City’s costs of providing water capacity service to new developments. The Fee Study used
7 specific examples of facilities that the City is contemplating constructing solely in order to make the
8 fee more accurate and avoid overcharging.

9 11. Respondents did not abuse their discretion under CEQA and the CEQA Guidelines,
10 with regard to their proceedings and decisions with respect to the finding the Proposed Fees do not
11 have the potential for resulting in either a direct physical change in the environment, or a reasonably
12 foreseeable indirect change in the environment. City’s findings were supported by substantial
13 evidence in the record.

14 12. Respondents did not abuse their discretion under CEQA and the CEQA Guidelines,
15 with regard to their proceedings and decisions with respect to finding the Proposed Fees are a
16 government funding mechanism that involved no commitment on behalf of the City to any specific
17 project which allegedly may result in a potentially significant physical impact on the environment.
18 City supported its findings with substantial evidence in the record.

19 13. Respondents did not abuse their discretion under CEQA and the CEQA Guidelines,
20 with regard to their proceedings and decisions with respect to the approval and adoption of the
21 Proposed Fees.

22 14. Respondents proceeded in a manner required by law in approving and adopting the
23 Proposed Fees and with respect to their decisions related to performing environmental review under
24 CEQA.

25 15. Respondents did not abuse their discretion under CEQA and the CEQA Guidelines,
26 with regard to their proceedings and decisions with respect to performing environmental review under
27 CEQA in connection with the City’s expansion of the Northeast Surface Water Treatment Plant and
28



1 Respondents object that this issue as framed by Petitioners is beyond the allegations in their petition
2 and complaint.

3 16. Respondents did not abuse their discretion under CEQA and the CEQA Guidelines,
4 with regard to responding to environmental comments during Respondents' evaluation of the
5 Proposed Fees.

6 17. Respondents dispute Petitioners' contentions.

7 18. The Proposed Fees will not cause irreparable and permanent harm, as Petitioners
8 allege.

9 19. Respondents' implementation of the Proposed Fees will not unlawfully burden or deter
10 the production of needed housing and other development within the City to the detriment of the
11 public.

12 20. Petitioners have not shown they lack an adequate remedy at law; Petitioners do not face
13 imminent harm.

14 21. Petitioners have failed to exhaust its administrative remedies.

15 22. Petitioners are not entitled to a judgment or writ of mandate on issues raised in
16 Petitioner's Statement of Issues which are not alleged in the Petition for Writ of Mandate.

17 23. Petitioners are not entitled to a determination the Proposed Fees are invalid or must be
18 set aside. Nor are they entitled to a determination that the City cannot impose the Proposed Fees or a
19 portion of them on new connections within the City of Fresno.

20 24. Petitioners are not entitled to a writ of mandate directing City to rescind and set aside
21 the approvals for the Proposed Fees, or commanding the City to refrain from taking further actions in
22 furtherance or implementation of the Proposed Fees.

23 25. Petitioners are not entitled to declaratory relief declaring the Proposed Fees invalid.
24 Nor are they entitled to a declaration the City's actions and process in establishing the fees were
25 contrary to law.

26 26. Petitioners are not entitled to injunctive relief restraining and enjoining the City and
27 others acting in concert from seeking to adopt or implement to Proposed Fees.

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Orange, State of California. My business address is 18881 Von Karman Avenue, Suite 1700, Irvine, CA 92612.

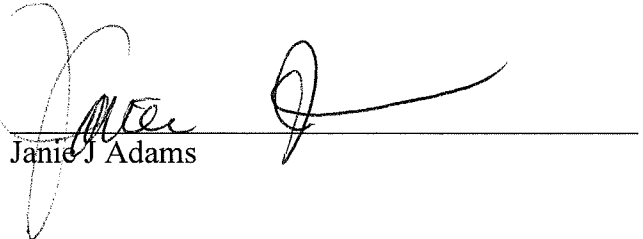
On September 25, 2017, I served true copies of the following document(s) described as **RESPONDENTS' STATEMENT OF ISSUES AND OBJECTIONS TO PETITIONERS' STATEMENT OF ISSUES** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the practice of Aleshire & Wynder, LLP for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid. I am a resident or employed in the county where the mailing occurred. The envelope was placed in the mail at Irvine, California.

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

Executed on September 25, 2017, at Irvine, California.



Jamie J Adams

SERVICE LIST
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Case No. 17CECG01669

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