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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE - CIVIL COMPLEX

OLEN PROPERTIES CORP., a Florida corporation,

Petitioner,

v.

CITY OF NEWPORT BEACH, and DOES 1-10, inclusive,

Respondents.

TPG (KCN) ACQUISITION, LLC, a Delaware limited liability company, and DOES 11-20, inclusive,

Real Parties in Interest.

Case No. 30-2021-01185991-CU-WM-CXC

ASSIGNED FOR ALL PURPOSES TO:
HON. KIRK H. NAKAMURA
DEPARTMENT CX-103

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF YIMBY LAW, PEOPLE FOR HOUSING ORANGE COUNTY (A CHAPTER OF YIMBY ACTION), AND CALIFORNIANS FOR HOMEOWNERSHIP, INC.'S MOTION FOR LEAVE TO INTERVENE AS REAL PARTIES IN INTEREST

Date: August 5, 2021
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Dept: CX-103

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I. INTRODUCTION.

California is experiencing a housing crisis of "historic proportions." (Gov. Code, § 65589.5, subd. (a)(2)(A).) Cities throughout the state, and especially high-cost coastal cities like Newport Beach, have failed for decades to approve enough new housing to meet the demand. Even when such cities plan for new housing production, their plans are often thwarted by project-specific opposition to new housing developments that implement those plans. Now, thanks to the state's signature piece of housing legislation, the Regional Housing Needs Assessment ("RHNA") law, cities are finally required to do their fair share to meet the regional need for housing at all levels of affordability. In addition, the state has amended the Housing Accountability Act ("HAA"), which limits the ability of cities to reject projects that meet all of their development standards, to provide stiffer penalties and to allow third-party housing organizations to file suit challenging improper denials. In this case, the city of Newport Beach ("the City") has attempted to satisfy state law by approving a project with affordable and market-rate housing that meets all of the City's development standards, on a site that the City designated long ago as appropriate for dense housing. The housing produced by this project will count towards the City's RHNA obligation and implement the City's General Plan. The instant lawsuit, however, seeks to invalidate that approval. If housing entitlements on sites designated to meet cities' housing goals and consistent with all of a city's development standards could be defeated by weak lawsuits like this one under the California Environmental Quality Act ("CEQA"), it would critically undermine the RHNA process and the HAA, and ensure that California's housing crisis continues indefinitely.

The people who stand to suffer if CEQA can be used to perpetuate the state's housing crisis by blocking housing on sites like the one at issue in this case are families in need of housing, whose interests are represented by advocacy organizations such as the intervenors, People for Housing Orange County, YIMBY Law, and Californians for Homeownership (collectively, "Intervenors"). People for Housing Orange County ("People for Housing") is a nonprofit organization dedicated to ending the housing shortage and increasing housing affordability across Orange County. Its members are residents of California who have been

deeply affected by the state's housing crisis, experiencing skyrocketing rents, lengthening commutes, and an unattainable dream of homeownership. People for Housing was closely involved in the implementation of the RHNA process for the southern California region. It successfully advocated for the "coastal plan" approved by the state department of Housing and Community Development ("HCD"), which ensured affluent coastal cities like Newport Beach would have to accommodate their fair share of the regional need for housing. People for Housing has many members living in the City who would directly benefit from the housing project at issue in this case, and the group submitted a letter to the City strongly supporting the project.

YIMBY Law and Californians for Homeownership are charitable non-profit organization dedicated to making housing more accessible and affordable by promoting and enforcing compliance with state housing law in California. They have filed lawsuits under the HAA to ensure cities are producing sufficient housing and monitored local compliance with RHNA law. Both organizations view the RHNA process as absolutely essential to addressing the root causes of the state's housing crisis and ensuring that every municipality does its fair share toward ending that crisis. Both organizations also submitted letters in support of the project at issue in this case.

If cities are prevented from meeting their RHNA obligations and approving HAA-compliant projects because of dubious CEQA lawsuits like this one, Intervenors' mission to address the housing shortage will be hindered, and the families in need of housing on whose behalf they advocate will continue to suffer from a lack of adequate and affordable housing. For these reasons, Intervenors' participation in this action is warranted under Code of Civil Procedure ("CCP") section 387, subdivision (d)(2). All the Intervenors have a direct and immediate interest in this case, and seek to advance the significant public interest in housing. Furthermore, their involvement will not enlarge the issues in the case because they seek only to assist in defending the project approval, and do not intend to introduce any new claims or factual allegations. Intervenors' interests are also sufficiently strong to outweigh any opposition.

II. STATEMENT OF FACTS.

A. The Statewide Housing Crisis and the Legislature's Response.

According to the state Legislature, "California has a housing supply and affordability crisis of historic proportions." (Gov. Code, § 65589.5, subd. (a)(2)(A).) The state has the most expensive housing market in the county. (*Id.* at subd. (a)(1)(B).) It has one of the highest rates of cost-burdened households in the nation, and one of the very lowest rates of homeownership in the nation. (*Id.* at subd. (a)(2)(G).) This housing crisis is "robbing future generations of the chance to call California home, stifling economic opportunities for workers and businesses, worsening poverty and homelessness, and undermining the state's environmental and climate objectives." (*Id.* at subd. (a)(2)(A)). The Legislature has recognized that one cause of this housing crisis has been the reluctance of local governments to approve new housing. (Gov. Code, § 65589.5, subd. (a)(1)(B) ["The excessive cost of the state's housing supply is partially caused by activities and policies of many local governments that limit the approval of housing…."].)

The Legislature has passed a number of bills in recent years to address the increasingly severe housing crisis in the state. It has also enacted numerous amendments to the HAA to severely curtail the ability of local governments to deny housing projects that meet all of their applicable objective development standards. The Legislature has added additional penalties for noncompliance, changed the standard of proof, provided a statutory right of action for housing organizations to bring suit under the law, and prohibited cities from enforcing zoning ordinances that conflict with their general plans. (Stats. 2016 c. 420 (A.B. 2584) § 1; Stats. 2017 c. 378 (A.B. 1515) § 1.5; Stats. 2018 c. 243 (A.B. 3194).)

In addition, the state recently mandated that the southern California region make plans to accommodate 1.3 million new homes over the next eight years. (*See* Request for Judicial Notice Exh. A (8/22/19 Letter from Department of Housing and Community Development to Southern California Association of Governments at 1[1].) This mandate is part of the RHNA

[1] Available at: https://scag.ca.gov/sites/main/files/file-attachments/6thcyclerhna_scagdetermination_08222019.pdf?1602190292.

process, which is the cornerstone of the state's effort to address its housing crisis. In short, the RHNA law requires cities and counties throughout the state to make plans to accommodate their regional share of the housing need at several different levels of affordability. (*See* Gov. Code, § 65580 et. seq.) Those plans must be updated every eight years as HCD, in collaboration with regional agencies for each region in the state, determines the overall regional need and distributes that regional need among the jurisdictions in the region. (Gov. Code, §§ 65584, subd. (a), 65584.01, 65584.04.) Each jurisdiction must then revise the "housing element" of its general plan by, among other things, including an inventory of sites in the city that can realistically accommodate the city's share of the regional need over the next eight year period. (Gov. Code, §§ 65583, subd. (a)(3), 65583.2.)

The Southern California Association of Governments ("SCAG"), which is the regional agency charged with distributing the 1.3 million new homes across the local governments in the southern California region, adopted a methodology that requires many affluent coastal cities, especially those in close proximity to transit and jobs, to accommodate a much higher share of the regional need for housing over the next eight year cycle than they did in previous cycles. (RJN Exh. B (SCAG Final RHNA Allocation Methodology[2]); RJN Exh. C (SCAG 6th Cycle Final RHNA Allocation Plan[3]).) As a result, many coastal cities have seen large increases in the number of homes they are required to accommodate within their land use plans over the next eight years, a substantial amount of which must be affordable to low income households.

Newport Beach is an affluent coastal city in Orange county with proximity to jobs and good schools. For the current, eight-year RHNA cycle (2013-2021), Newport Beach was required to accommodate just 5 new homes. (RJN Exh. D (HCD 5th Cycle Annual Progress Report Permit Summary for Newport Beach[4]). In the upcoming 2021-2029 RHNA cycle, Newport

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[2] Available at: https://scag.ca.gov/sites/main/files/file-attachments/scag-final-rhna-methodology-030520.pdf?1602189316

[3] Available at: https://scag.ca.gov/sites/main/files/file-attachments/6th-cycle-rhna-proposed-final-allocation-plan.pdf?1614911196

[4] Available at: https://www.hcd.ca.gov/community-development/annual-progress-reports.shtml

Beach has been assigned a RHNA allocation of 4,845 homes, including 1,456 very low-income homes and 930 low-income homes. (RJN Exh. C (SCAG 6th Cycle Final RHNA Allocation Plan at 3.) The City planning staff is currently drafting the needed updates to the City's housing element, and has posted on the City's website a draft housing element, including an analysis of sites that are suitable and likely to be developed for housing to accommodate some share of the City's RHNA allocation of 4,845 new homes. (RJN Exh. E (City of Newport Beach Draft Housing Element March 10, 2021;[5] Exh F (Appendix B: Site Analysis) [6].)

B. <u>The Residences at 4400 Von Karman Project</u>.

Over ten years ago, the City approved and certified a full Environmental Impact Report ("EIR") for the Koll-Conexant Integrated Conceptual Development Plan ("ICDP"). The ICDP identified a 13-acre portion of the Koll Center Newport office park as appropriate for multi-family housing. The ICDP was intended to fulfill the purposes of the City's General Plan Land Use Element, which likewise calls for multi-family housing on this site. Pursuant to the ICDP, Real Party in Interest TPG proposed a project on the site called "The Residences at 4400 Von Karman" that includes up to 312 new homes, of which 13 are affordable to families with very low incomes, and a public park ("Project"). The Project complies with all the applicable standards in the ICDP. After an extensive process of public participation, in early 2021 the Newport Beach City Council approved the project. The City granted entitlements including approval of a Planned Community Development Plan Amendment, major site plan development review, an affordable housing implementation plan, and a development agreement, among others. The City also adopted an Addendum to the General Plan Update Program EIR and the Housing Element Initial Study/Negative Declaration for the project. (RJN Exh. G (City Council Staff Report for Residences at 4400 Von Karman dated Jan. 12, 2021.)

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[5] Available at: https://www.newportbeachca.gov/government/departments/community-development/planning-division/general-plan-codes-and-regulations/general-plan-update/housing-element-screencheck-draft-march-10-2020.

[6] Available at: https://www.newportbeachca.gov/PLN/Housing_Element_Update/March_10_2021_Draft/AppendixBSites_Analysis.pdf.

The City's draft housing element sites analysis identifies the Residences at 4400 Von Karman as a project that is very likely to be developed during the next RHNA cycle and credits the 13 very low income homes towards its very-low income RHNA share. (RJN Exh. F (Draft Housing Element Appendix B: Site Analysis at B-4; B-17.)

Petitioner Olen Properties Corp. has now brought suit seeking to invalidate the approval of the project on numerous grounds, including the Project's affordable housing component.

C. People for Housing Orange County

People for Housing is a grassroots non-profit organization dedicated to ending the housing shortage and increasing housing affordability across Orange County. The mission of People for Housing is to achieve lower rents and a more sustainable and prosperous region where people can afford to choose where they live and access quality jobs, transportation, schools and community resources. People for Housing achieves this mission through policy analysis, civic education, and political organizing. People for Housing is the leading voice in Orange county on pro-housing policy and home to a growing community of pro-housing social justice activists, researchers, and community leaders. (Hansburg Decl. at ¶ 2).

Since January 2020, People for Housing has been organized as a chapter of YIMBY Action, a 501(c)(4) nonprofit organization consisting of over 1,000 pro-housing activists fighting for more inclusive housing policies and a future of abundant housing. Among other goals, YIMBY Action aims to increase the housing supply and lower housing costs in order to alleviate poverty, grow the economy, end homelessness, eliminate racial segregation and stop climate change. It seeks to accomplish these goals by, among other things, pushing local governments to approve more housing, streamlining land use regulation, and supporting legislation to reform zoning laws that restrict housing supply. (Hansburg Decl. at ¶ 3).

People for Housing and YIMBY Action's members have experienced firsthand the devastating consequences of California's housing shortage. They have endured skyrocketing rents that made the cost of living unbearable, been forced to relocate to communities far from their jobs and schools, and delayed life decisions like marriage or having children because of housing

insecurity. They have found homeownership unattainable and been shut out of communities with jobs and good schools. (Hansburg Decl. at ¶ 4).

People for Housing and YIMBY Action seek to address the root causes of the housing shortage that affects their members by advocating for increased housing production, especially affordable housing production, and for policies that ensure every jurisdiction accommodates its fair share of the regional housing need. Their priorities include reforming zoning laws that restrict housing supply and streamlining permitting processes to reduce housing costs. People for Housing was closely involved in implementing the RHNA process in the southern California region. People for Housing's advocacy helped ensure that cities throughout the region, including cities in Orange County, will be required to plan for over 1.3 million homes over the next eight years, and that high-cost coastal cities will finally be required to accommodate their fair share of the regional need for housing. People for Housing has also been involved in The Campaign for Fair Housing Elements, a collaborative effort by housing advocates around the state organized by YIMBY Law to monitor and ensure cities' compliance with their RHNA obligations. (Hansburg Decl. at ¶ 5).

Due to the City's status as a high-cost coastal city with proximity to good schools and jobs, as well as a city that has had minimal population growth for the last many years and virtually no new housing construction, it has been one of People for Housing's top priorities to ensure that the City increases its housing supply, especially its affordable housing supply, so that people of more modest means can afford to live there. People for Housing has been active in the City, advocating for many housing projects and participating in the city's housing element update process mandated by the RHNA law. Several members of People for Housing are City residents. Many of them joined because they desire to remain in the City, and fear that they might not be able to do so if the City continues to fail to produce housing. Other City residents have joined because they recognize that the City suffers from a lack of affordable housing and they desire to see it do more to accommodate its share of the need for affordable housing. Still other City residents joined because they work in development adjacent fields and want to see more opportunities to build housing in coastal cities like Newport Beach. (Hansburg Decl. at ¶ 6.)

People for Housing is a strong supporter of the Project, and submitted a letter to the City Council expressing its support. As described more fully in the letter, attached as Exhibit 1 to the Hansburg Declaration, People for Housing supported the Project because it would bring much needed housing opportunities to the City, including affordable housing, with minimal impacts on current residents. The Project would alleviate the housing crisis that affects People for Housing's members and help meet the City's RHNA obligations. As the letter further details, People for Housing considers it absolutely critical to addressing the state's housing crisis that projects like this one that were proposed and approved pursuant to a comprehensive plan with a full EIR over a decade ago be able to move forward without meritless CEQA litigation. (Hansburg Decl. at ¶ 10.)

D. YIMBY Law

YIMBY Law is a 501(c)(3) charitable non-profit organization dedicated to making housing more accessible and affordable by promoting and enforcing compliance with state housing law in California. The voice of the housing consumer has traditionally been absent and ignored in litigation involving housing and environmental issues, as developers, cities, and neighborhood groups litigate their respective concerns while no one speaks for the consumer. YIMBY Law's role is to provide that voice. (Trauss Decl. at ¶ 3-4.)

YIMBY Law enforces state laws such as RHNA and the HAA by advising agencies of their obligations under state law, and filing lawsuits against those agencies when they fail to comply. For example, YIMBY Law recently filed suit against HCD for assigning a RHNA for the San Francisco Bay Area that is too low, in violation of state law. (Trauss Decl. at ¶ 3.) YIMBY Law also brought suit against the City of Simi Valley for violating the HAA by failing to approve a senior housing project. (*Ibid*.) In addition to its litigation work, YIMBY Law organized the Campaign for Fair Housing Elements, a collaborative effort by housing advocates around the state to monitor and ensure cities' compliance with their RHNA obligations. (Trauss Decl. at ¶ 5.) In collaboration with People for Housing, YIMBY Law submitted a public comment letter on the City's draft housing element. (Trauss Decl. at ¶ 9 & Exh. 1.)

YIMBY Law is a strong supporter of the Project, and submitted a letter to the City Council expressing its support. YIMBY Law's mission is to protect the integrity of the RHNA

process and to ensure that cities comply with the HAA by approving housing projects that meet all of their applicable objective criteria. As described more fully in the letter of support, attached as Exhibit 2 to the Trauss Declaration, YIMBY Law advised the City Council that it was prohibited from disapproving the project under the HAA, because the project met all of the City's applicable objective development criteria. (Trauss Decl. at ¶ 10 & Exh. 2.)

YIMBY Law has an interest in ensuring that sites designated for housing in a city's housing element and compliant with all of a city's applicable objective development standards will actually accommodate housing. If this lawsuit is successful, it will frustrate Newport Beach's ability to meet its RHNA goals, frustrate the aim of the HAA to ensure that compliant projects are approved, and undermine the work of groups like YIMBY Law to ensure that high-opportunity cities such as Newport Beach accommodate their fair share of the regional need for housing. (Trauss Decl. at ¶ 11.)

E. Californians for Homeownership

Californians for Homeownership ("Californians") is a 501(c)(3) non-profit charity that was founded in 2018 to address California's housing crisis by supporting the production and availability of housing affordable to families at all income levels. (Gelfand Decl. at ¶ 10.) It does this work on behalf of the Californians who are impacted most by California's affordable housing crisis, including the potential residents of unbuilt developments (for both rental and ownership housing). (*Ibid.*)

To advance this mission, Californians' primary activity is impact litigation to enforce state housing laws and to curtail exclusionary and obstructive zoning and land use practices. (Gelfand Decl. at ¶ 11.) One critical element of its work is the systematic statewide enforcement of critical housing laws, such the laws regarding RHNA and Housing Elements and the laws streamlining the approval of accessory dwelling units ("ADUs"). From 2019 through early 2021, it engaged in pre-litigation correspondence during the ADU ordinance development process in at least 150 cities and counties, obtaining changes to unlawful provisions in over 100 and suing two. (Gelfand Decl. at ¶ 12.) Starting in 2021, it has begun a similar statewide enforcement program for the Housing Element laws, which implement the state's RHNA system.

(*Ibid.*)

In addition to this work, Californians monitors land use decisions statewide, and comments in favor of housing development projects for which state law mandates approval. (Gelfand Decl. at ¶ 13.) Californians supported the Project through a letter to the City Council expressing its support. (Gelfand Decl., Exh. 2.)

Californians has worked extensively in Orange County. For example, it has sued under the HAA to overturn the unlawful denial of a mixed-income housing development in the City of Huntington Beach, and it has used pre-litigation correspondence to hold up the adoption of an unlawful ADU ordinance in the City of Irvine. (Gelfand Decl. at ¶ 14.)

Given its mission and activities, Californians has a strong interest in ensuring that the City's housing plans are not curtailed by dubious self-interested environmental litigation filed by a neighboring property owner.

III. ARGUMENT

A. Intervenors Meet the Requirements for Intervention to Protect the Interests of Their Members, Families in Need of Housing, and City Residents .

CCP section 387, subdivision (d)(2) gives the court discretion to permit an interested nonparty to intervene in an existing action, and the courts have emphasized that "section 387 should be liberally construed in favor of intervention." (*Simpson Redwood Co. v. State of California* (1987) 196 Cal.App.3d 1192, 1200 ("*Simpson Redwood*").) A third party may intervene in an action if (1) the party has a direct and immediate interest in the action, (2) the intervention will not enlarge the issues in the litigation, and (3) the reasons for the intervention outweigh any opposition by the parties presently in the action. (*Truck Ins. Exchange v. Superior Court* (1997) 60 Cal.App.4th 342, 346.) Because Intervenors meet all three requirements and have filed a timely application, the Court should grant this request for leave to intervene.

B. Intervenors Have Direct and Immediate Interests in this Case Warranting Intervention.

Courts broadly interpret the "interest" necessary for a party to intervene pursuant to Section 387. Although the interest must be "direct, not consequential, . . . [¶] the intervener need

neither claim a pecuniary interest nor a specific legal or equitable interest in the subject matter of the litigation." (*Simpson Redwood, supra* 196 Cal.App.3d at 1199-1200.) Nor must the intervener show that any adverse impact to its interest is inevitable. "It is enough that there be a substantial probability that [its] interests will be so affected." (*Timberidge Enterprises, Inc. v. City of Santa Rosa* (1978) 86 Cal.App.3d 873, 881, citation omitted.)

In addition, standing is granted extremely liberally in CEQA cases. Individuals living near a project site are generally presumed to be sufficiently interested in the project to warrant standing, (*Bozung v. LAFCO* (1975) 13 Cal.3d 263, 272 [individual had standing because he lived near the project site]; *Prime Healthcare Mgmt. v Valley Health Sys. (In re Valley Health Sys*.) (Bankr. C.D.Cal. 2010) 429 B.R. 692, 739.) And organizations generally have standing to sue on behalf of their members if the members have standing, the interests the organization seeks to protect in the lawsuit are germane to the organization's purpose, and neither the claim asserted nor the relief requested requires participation of the members in the lawsuit. (*Brotherhood of Teamsters v Unemployment Ins. Appeals Bd*. (1987) 190 Cal.App.3d 1515, 1522; *Citizens Against Forced Annexation v County of Santa Clara* (1984) 153 Cal.App.3d 89).

With the foregoing in mind, it is clear that each of the Intervenors satisfies the requirements for intervention in this case.

1. <u>The Interest of People for Housing Warrants Intervention.</u>

People for Housing's interest in this case is direct and immediate under the liberal intervention standard. People for Housing has several members who are City residents. These members joined People for Housing because they are concerned about the lack of affordable housing in the City and stand to benefit if it approves more housing. People for Housing has been active in advocating for housing projects in the City and has participated in its housing element update process. People for Housing strongly supports the Project and submitted a letter in support to the City Council because the project would add badly needed market-rate and affordable housing in Newport Beach. (Hansburg Decl. at ¶¶ 6, 10.)

In addition, People for Housing's members are directly affected by this case because their ability to find housing in high-opportunity areas of Orange County like the City

depend on whether cities are required to actually meet their fair share of the regional need for housing under the RHNA law. That is the reason why People for Housing's members have been active in the City's housing element process and specifically in supporting the Project. If CEQA can be used to block housing on sites that cities have designated to meet parts of their RHNA obligations, then the housing need will remain unmet and People for Housing's members will continue to suffer skyrocketing rents, long commutes, exclusion from communities with jobs and good schools, and an unattainable dream of homeownership. (Hansburg Decl. at ¶ 11). This is a direct and immediate interest.

Furthermore, People for Housing's interest in the case is not adequately represented by any of the existing parties. While both the City and the real party in interest are interested in the financial benefits of the project, they are not as directly and immediately concerned as People for Housing is with addressing the statewide housing crisis. The voice of the housing consumer is often absent from CEQA litigation, which tends to focus on the environmental consequences of *approving* new housing and ignores the consequences of *denying* new housing. People for Housing will bring that needed voice to this litigation.

Perhaps recognizing the important perspective of nonprofit public interest organizations, California courts have routinely allowed such organizations to intervene to represent public interests, such as the public interest in housing. For example, in the litigation leading up to the California Supreme Court's decision in *California Building Industry Assn. v. City of San Jose* (2015) 61 Cal.4th 435 ("*CBIA*"), the trial court permitted a collection of affordable housing organizations to intervene to advance the affordable housing community's arguments regarding the validity of a local housing ordinance in the face of a constitutional challenge. The intervenors in that case participated in the appeals and the appellate courts made reference to their arguments. (*CBIA*, *supra*, 61 Cal.4th at pp. 453-54 & fn. 9.) Similar cases involving non-profit intervenors include *Home Builders Assn. of Northern California v. City of Napa* (2001) 90 Cal.App.4th 188, 193 & n.4 (affordable housing organizations) and *Simpson Redwood*, *supra*, 196 Cal.App.3d at p. 1204 (environmental organization).

For all these reasons, People for Housing has a direct and immediate interest in this

case.

2. The Interests of YIMBY Law and Californians Warrant Intervention.

YIMBY Law and Californians also have a direct and immediate interest in this case because their work enforcing the HAA and implementing the RHNA process will be completely undermined if CEQA can be used to prevent cities from complying with their obligation to accommodate their fair share of the regional need for housing. (Trauss Decl. at ¶ 9; Gelfand Decl. at ¶ 8.) In *U.S. Ecology, Inc. v. State of California* (2001) 92 Cal.App.4th 113, 119-20, 139-40, the court upheld a grant of permissive intervention to environmental organizations who wanted to join the State in defending a nuclear waste handler's legal action because the development would directly affect environmental and safety concerns that were of interest to the organizations' missions and purpose. Since the core of YIMBY Law's and Californians' mission is using state laws like RHNA and the HAA to ensure cities meet their housing obligations, they both have a direct interest in ensuring that CEQA is not used to block housing projects that are fully HAA-compliant and that cities have designated in their housing elements to accommodate their RHNA obligations. And like People for Housing, YIMBY Law and Californians' interest in enforcing state housing law is not otherwise represented by existing parties in this action. These organizations represent families in need of housing, who have long been absent and ignored in litigation over housing and environmental issues. (Trauss Decl. at ¶ 4.)

As discussed *ante*, courts have frequently allowed nonprofit organizations to intervene to represent public interests, such as the public interest in housing. The courts' decisions to permit intervention by non-profit organizations is consistent with a trend in California law to recognize that such organizations have an important stake in public-interest litigation and thus have standing to participate in such litigation if they are protecting an important public interest and enforcing a public duty. (*Environmental Protection Info. Ctr. v Department of Forestry & Fire Protection* (2008) 44 Cal.4th 459, 479 ("*EPIC*"); *Common Cause v Board of Supervisors* (1989) 49 Cal.3d 432, 439.) Public interest standing is broadly construed in order to ensure that the public interest is vindicated. (*Green v Obledo* (1981) 29 Cal.3d 126, 144.) Broad public interest

standing is consistent with CEQA's extremely liberal standing requirements. (*Bozung v. LAFCO*, *supra*, 13 Cal.3d at p. 272, citing *U.S. v SCRAP* (1973) 412 US 669, 678 ["[S]trict rules of standing that might be appropriate in other contexts have no application where broad and long term effects are involved."]; *McKean v. Hastings College* (1986) 185 Cal.App.3d 877, 892-893 ["The participation of incorporated and unincorporated associations ... has become common and accepted in public interest-oriented litigation"].)

For example, in *Urban Habitat Program v. City of Pleasanton* (2008) 164 Cal.App.4th 1561, 1581, the court held that Urban Habitat, a nonprofit affordable housing advocacy organization, had standing to sue to enforce the city of Pleasanton's obligation under the RHNA law because the need for affordable housing was "weighty" and Urban Habitat was enforcing the city's duty to accommodate its share of that housing. (See also *EPIC*, *supra* 44 Cal.4th at pp. 480-81 [labor union had standing under CEQA to challenge habitat conservation plan because of its "long-standing involvement in environmental and economic sustainability issues."]) In this case, likewise, YIMBY Law and Californians are nonprofit housing organizations with a long-demonstrated commitment to expanding housing supply in high-opportunity areas like the City, and a particular interest in ensuring that cities meet their RHNA obligations and approve projects that are HAA compliant. Therefore, YIMBY Law and Californians have a direct and immediate interest in this case.

C. <u>The Intervention Will Not Enlarge the Issues in the Litigation</u>.

The reason the Intervenors seek leave to intervene is because they intend to join the City and real party in interest in offering a vigorous defense against the claims already brought by Petitioner, which all revolve around approval of the Project. The proposed answer in intervention included with this application raises no new claims, and Intervenors do not intend to file a cross-complaint or otherwise introduce new claims. As a result, Intervenors will not enlarge the issues in the litigation.

D. The Grounds for Intervention Outweigh Any Opposition to It.

As detailed above, the grounds for Intervenors' participation in this case are strong. They will represent important public interests that are not otherwise represented in this litigation, and their participation will assist the Court in understanding the relevant legal issues. Furthermore, no party will be prejudiced by the intervention. The case is at an early stage, where the administrative record has not yet been completed and no date has been set for a hearing on the merits of the case. The intervention will not cause any delay or increase the scope of discovery. The existing parties to the action therefore do not have a reasonable basis to oppose this request to intervene. (*Reliance Ins. Co. v. Superior Ct. of Santa Clara Cnty.* (2000) 84 Cal.App.4th 383, 387-388 [party's opposition to intervention insufficient basis for denying leave to intervene].)

E. The Motion for Intervention is Timely.

Leave to intervene is timely at any time—even after judgment—so long as there is no prejudice to the parties and intervention is appropriate under the circumstances. (*Truck Ins. Exchange, Truck Ins. Exchange*, supra, 60 Cal.App.4th at 350-51 [no prejudice]; *Mallick v. Superior Court* (1979) 89 Cal.App.3d 434, 437 [members of a class may intervene in class action after judgment].) As discussed above, the case is at an early stage, where the administrative record has not yet been completed and no date has been set for a hearing on the merits of the case. The intervention will not cause any delay or increase the scope of discovery. Therefore, there is no prejudice to the petitioner and the application is timely.

IV. CONCLUSION.

YIMBY Law, People for Housing and Californians respectfully request that the Court grant their motion for leave to intervene as Intervenor Respondents.

Dated: July 2, 2021

MILLER STARR REGALIA

By: 

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Dated: July 2, 2021

CALIFORNIANS FOR HOMEOWNERSHIP, INC.

By: 

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