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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES, CENTRAL DISTRICT

SANTA MONICA BAY TOWERS HOMEOWNERS ASSOCIATION,

Petitioner/Plaintiff,

v.

CITY OF SANTA MONICA, CITY COUNCIL OF THE CITY OF SANTA MONICA, and DOES 1 through 10, Inclusive,

Respondents/Defendants.

OCEAN AVENUE, LLC and DOES 11 through 50, Inclusive,

Real Parties in Interest/Defendants.

Case No. 20STCP03605

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF YIMBY LAW AND ABUNDANT HOUSING LA'S MOTION FOR LEAVE TO INTERVENE AS REAL PARTIES IN INTEREST

Date: May 28, 2021
Time: 8:30 a.m.
Dept.: 20

Reservation No.: 623981032842

Contains CEQA causes of action.

ASSIGNED FOR ALL PURPOSES TO: HONORABLE JUDGE KEVIN C. BRAZILE, DEPT. 20

Action Filed: November 2, 2020
Trial Date: None Set.

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I. INTRODUCTION.

California is experiencing a housing crisis of "historic proportions." (Gov. Code. Section 65589.5 § (a)(2)(A)). Cities throughout the state, and especially high-cost coastal cities like Santa Monica, 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 housing law, 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. And Santa Monica has attempted to meet part of its share by approving new affordable and market-rate housing on the site of the Fairmont Miramar hotel, housing that will count towards the city's RHNA obligations and implement the City's General Plan and Downtown Community Plan, which focus new development in Santa Monica's transit and job rich Downtown. The instant lawsuit, however, seeks to invalidate that approval. If housing entitlements on sites designated to meet cities' housing goals could be defeated by weak lawsuits like this one under the California Environmental Quality Act ("CEQA,") it would undermine the RHNA process and cities' long-range planning efforts for new housing, 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 Fairmont are the housing consumers represented by advocacy organizations such as the intervenors, Abundant Housing LA and YIMBY Law (collectively "intervenors.") Abundant Housing LA ("AHLA") is a nonprofit organization dedicated to ending the housing shortage and increasing housing affordability across Los Angeles 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. AHLA was closely involved in the RHNA process for the southern California region, and successfully advocated for the "coastal plan" approved by the state department of Housing and Community Development ("HCD"), that ensured affluent coastal cities like Santa Monica would have to accommodate their fair share of the regional need for

housing. AHLA has many members living in the city of Santa Monica who would directly benefit from the redevelopment of the Fairmont Miramar hotel, and the group organized a petition and submitted letters to the city strongly supporting the project.

YIMBY Law is a charitable non-profit organization dedicated to making housing more accessible and affordable by promoting and enforcing compliance with state housing law in California. It has filed lawsuits to ensure cities are producing sufficient housing, and trains volunteers to advocate for cities across the state to meet their RHNA obligations. YIMBY Law views 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.

If cities are prevented from meeting their RHNA obligations and implementing their long-range land use plans because of dubious CEQA lawsuits like this one, the intervenors' mission to address the housing shortage will be hindered, and the housing consumers on whose behalf they advocate will continue to suffer from a lack of adequate and affordable housing. For these reasons, AHLA and YIMBY Law's intervention into this action is warranted under Code of Civil Procedure ("CCP") section 387(d)(2). Both 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

According to the state legislature, "California has a housing supply and affordability crisis of historic proportions." (Gov. Code. Section 65589.5 § (a)(2)(A)). The state has the most expensive housing market in the county. *Id.* at § (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 § (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 (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. Section 65589.5(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…."].)

In light of the severity of the housing shortage in southern California, 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 Regional Housing Needs Assessment and Allocation ("RHNA") 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 the state Department of Housing and Community Development, 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't Code §§ 65584(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't Code §§ 65583(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.

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

(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.

Santa Monica is an affluent coastal city in Los Angeles county with proximity to transit and jobs. (RJN Exh. D (SCAG Pre-Certified Local Housing Data for the City of Santa Monica at 6 (Santa Monica poverty rate well below media for LA county); *id.* at 12 (showing that rents and home prices in Santa Monica far outstrip the median cost of living in the LA area); Declaration of Leonora Camner at ¶ 5.) For the current, eight-year RHNA cycle (2013-2021), Santa Monica was required to accommodate 1,674 new homes. Like most cities in California, however, Santa Monica failed to meet its housing goals in the low income, very low income, and moderate income categories. (RJN Exh. E (HCD 5th Cycle Annual Progress Report Permit Summary for Santa Monica[4]). In the upcoming 2021-2028 RHNA cycle, Santa Monica has been assigned a RHNA allocation of 8,895 homes, an increase of more than five times its previous RHNA allocation, including 2,794 very low-income homes, 1,672 low-income homes, and 1,702 moderate income homes. (RJN Exh. C (SCAG 6th Cycle Final RHNA Allocation Plan at 3.) According to the city of Santa Monica's website, "[t]he significant increase in the City's RHNA housing number is indicative of the severity of the current housing crisis." (RJN Exh. F (City of Santa Monica Comm. Dev. Dept., 6th Cycle 2021-2029 Housing Element EIR webpage[5]).) The city planning staff is currently drafting the needed updates to the city's housing element, and has

[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/housing-element/index.shtml#annual

[5] Available at: https://www.smgov.net/Departments/PCD/Environmental-Reports/6th-Cycle-2021-2029-Housing-Element-EIR/

posted on the city's website a draft inventory of 375 sites in the city that have high potential to accommodate some share of the city's RHNA allocation of 8,895 new homes. (RJN Exh. G (City of Santa Monica Housing Element Update (2021-2029) – Draft Concepts at 3.[6])

B. The Fairmont Miramar Project.

For the past ten years, the city of Santa Monica has been working with the real party in interest Ocean Avenue LLC to redevelop a 4.7 acre site at the end of Wilshire Boulevard across from Palisades Park, currently occupied by the Fairmont Miramar hotel and a nearby parking lot. (RJN Exh. H Santa Monica City Council Staff Report dated Sept. 29, 2020, at 1-4.) After an extensive process of public participation, on September 29, 2020 and October 13, 2020 the Santa Monica city council approved the project, which includes up to 60 market-rate condominium homes and 42 affordable homes, along with a hotel and various other commercial uses. (Id. at 1-4; 8-9.) The project is centrally located in a pedestrian-friendly area near many neighborhood amenities and convenient public transportation. (Id. at 35-36.) It includes numerous benefits for the Santa Monica community, such as a local hiring program, community meeting space, historic preservation, union jobs and a substantial monetary contributions to the city, in addition to the increased affordable and market-rate housing supply. (*Id.* at 3-4; 45-55.) The project is also designed to be open to the public, offering an opportunity for members of the community to enjoy quality public space near the ocean in the heart of Santa Monica. (*Id.* at 3**;** 25; 26-28.)

The city granted entitlements including approval of a development agreement and the approval of a vesting tentative tract map, certified an environmental impact report for the project, adopted a statement of overriding considerations and found the project exempt from CEQA under Public Resources Code section 21099(d)(1), as an urban infill site within a transit priority area. The Fairmont Miramar site is listed on the city's draft housing element inventory as one of the sites with high potential to be redeveloped to accommodate a share of the city's RHNA of 8,895 new homes. (RJN Exh. G (City of Santa Monica Housing Element Update (2021-2029) –

[6] Available at: https://www.santamonica.gov/housing-element-update-draft-concepts

Draft Concepts at 3.)

The petitioner has now brought suit seeking to invalidate the approval of the project on numerous grounds, including the project's affordable housing component.

C. Abundant Housing LA ("AHLA").

Abundant Housing LA ("AHLA") is a 501(c)(4) nonprofit organization, consisting of over 200 supporting members dedicated to ending the housing shortage and increasing housing affordability across Los Angeles County. The mission of Abundant Housing LA 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. AHLA achieves this mission through policy analysis, civic education, and political organizing, together with the Abundant Housing LA Education Fund, its 501(c)(3) partner organization. Today, AHLA is the leading voice in Los Angeles county on pro-housing policy and home to a growing community of pro-housing social justice activists, researchers, and community leaders. (Declaration of Leonora Camner ("Camner Decl.") at ¶ 2).

AHLA'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. (Camner Decl. at ¶¶ 3-4).

AHLA seeks to address the root causes of the housing shortage that affects its members by advocating for increased overall housing production, especially affordable housing production, and the adoption and implementation of long-range city and county land use plans that accommodate each jurisdiction's share of the regional housing need. AHLA's priorities include reforming zoning laws that restrict housing supply and streamlining permitting processes to reduce housing costs. Over the past five years, AHLA has organized support for numerous housing developments, pushed the city of Los Angeles to allow more housing near the Expo line to improve transit access, and was closely involved in the Regional Housing Needs Assessment

(RHNA) process in the southern California region. AHLA's advocacy helped ensure that cities in the Los Angeles area 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. (Camner Decl. at ¶ 4).

Due to Santa Monica's status as a high-cost coastal city with proximity to transit, good schools and jobs, it has been one of AHLA's top priorities to ensure that Santa Monica increases its housing supply, especially its affordable housing supply, so that people of more modest means can afford to live there. AHLA has supported numerous housing developments and other causes in Santa Monica. AHLA is part of the Santa Monica Housing Element Working Group, which provides input into the city's process of updating its housing element to comply with its RHNA obligations, including the selection of appropriate sites for housing. Twenty of AHLA's members, including its executive Director Leonora Camner, live in Santa Monica, and Ms. Camner is a member of the Santa Monica Housing Commission. Ms. Camner lives near the project site and frequently visits with her family. (Camner Decl. at ¶ 5.)

AHLA is a strong supporter of the Fairmont Miramar redevelopment project at issue in this litigation, including its affordable housing component. AHLA organized a petition in support of the project and submitted letters to the planning commission and city council expressing its support. As described more fully in the letters, attached as Exhibits 1 and 2 to the Camner Declaration, AHLA supported the project due to the many public benefits it provides, especially the contribution to the affordable housing supply, its local hiring program, and its open and inclusive design. (Camner Decl. at ¶ 6.)

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 by advising agencies of their obligations under state law, and filing lawsuits against those agencies when they fail to comply. For example, YIMBY Law has recently filed suit against the state Department of Housing and Community Development for assigning a Regional Housing Need Assessment for the San Francisco Bay Area that is too low, in violation of state law. (Declaration of Sonja Trauss ("Trauss Decl.") at ¶ 3.) YIMBY Law also organizes and provides technical assistance to pro-housing activists all over California who are interested in advocating for housing element updates under the RHNA law that realistically plan for housing, and that distribute affordable and dense housing equitably across cities. (Trauss Decl. at ¶ 5.)

YIMBY Law has an interest in ensuring that sites designated for housing in a city's housing element and approved for housing will actually accommodate housing. If this lawsuit is successful, it will frustrate Santa Monica's ability to meet its RHNA goals, and undermine the work of groups like YIMBY Law to ensure that high-opportunity cities such as Santa Monica accommodate their fair share of the regional need for housing. (Trauss Decl. at ¶¶ 6-9.)

III. ARGUMENT: YIMBY LAW AND AHLA MEET THE REQUIREMENTS FOR INTERVENTION IN THIS CASE TO PROTECT THE INTERESTS OF HOUSING CONSUMERS AND SANTA MONICA RESIDENTS .

"The court may, upon timely application, permit a nonparty to intervene in the action or proceeding if the person has an interest in the matter in litigation, or in the success of either of the parties, or an interest against both." (CCP § 387(d)(2).) 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.) 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 AHLA and YIMBY Law meet all three requirements and have filed a timely application, the Court should grant this request for leave to intervene.

A. AHLA Has A Direct And Immediate Interest In This Case.

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). Indeed, the petitioner – a home owners association of a 14-story, ocean front, luxury condominium building – alleges standing based on the proximity of its own members to the project site and the effects the project will presumably have on those members as a result of their proximity. (Petition at ¶¶ 16-19).

AHLA's interest in this case is certainly as direct and immediate as the petitioner's interest, assuming petitioner is authorized under its HOA governing documents to initiate this litigation. Many of AHLA's members, including the organization's executive director Leonora Camner, live in Santa Monica near the development site and stand to enjoy the benefits that the development promises, including new housing, a community room, and an inviting public space. AHLA members have been involved in the process of updating Santa Monica's housing element process to comply with the city's RHNA obligations, and submitted letters and circulated a

petition in support of the Fairmont project due to its many public benefits. (Camner Decl. at §§5-6.)

In addition, AHLA's members are directly affected by this case because their ability to find housing in high-opportunity areas of Los Angeles county like Santa Monica 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 AHLA's members have been active in Santa Monica's RHNA process and specifically in supporting the Fairmont project. If CEQA can be used to block housing on sites that cities have designated to meet parts of their RHNA obligations and thereby impede implementation of long-range plans for increasing overall housing supply, then the housing need will remain unmet and AHLA's members will continue to suffer skyrocketing rents, long commutes, exclusion from communities with jobs and good schools, and an unattainable dream of homeownership. (Camner Decl. at ¶¶ 3-4). This is a direct and immediate interest.

Furthermore, AHLA's interest in the case is not adequately represented by any of the existing parties. While both the city of Santa Monica and the real party in interest are interested in the financial benefits of the project, they are not as directly and immediately concerned as AHLA 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. AHLA 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, 453 (2015), 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. *See California Bldg. Indus. Assn. v. City of San Jose* (2013) 216 Cal.App.4th 1373, 1380-82 (superseded); California Building Indus. Assn., 61 Cal.4th at 453-54. Similar cases involving non-profit intervenors include *Home Builders Ass 'n of N. California v. City of Napa*, 90 Cal.App.4th 188, 193 & n.4 (2001) (affordable housing organizations) and *Simpson Redwood*, 196 Cal.App.3d at 1204 (environmental organization).

For all these reasons, AHLA has a direct and immediate interest in this case.

B. YIMBY Law Has A Direct And Immediate Interest In This Case.

YIMBY Law also has a direct and immediate interest in this case because its work on 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.) 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 mission is using state laws like RHNA to ensure cities meet their housing obligations, YIMBY Law has a direct interest in ensuring that CEQA is not used to block housing on sites that cities have designated in their housing elements to accommodate their RHNA obligations. And like AHLA, YIMBY Law's interest in enforcing state housing law is not otherwise represented by existing parties in this action. YIMBY Law represents the housing consumer, who has long been absent and ignored in litigation over housing and environmental issues. (Trauss Decl. at ¶ 4.)

As discussed *supra,* 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; *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*, supra, 13 Cal.3d at 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 , et al., 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* Envi. Protection Info Ctr., *supra* 44 Cal.4th at 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 is a nonprofit housing organization with a long-demonstrated commitment to expanding housing supply in high-opportunity areas like Santa Monica, and a particular interest in ensuring that cities meet their RHNA obligations. Therefore, YIMBY Law has a direct and immediate interest in this case.

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

The reason YIMBY Law and AHLA seek leave to intervene is because they intend to join the respondents in offering a vigorous defense against the claims already brought by Petitioner, which all revolve around approval of the Fairmont Miramar 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 Reasons In Favor Of Intervention Outweigh Any Opposition To It.

As detailed above, the reasons in favor of allowing YIMBY Law and AHLA to intervene 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. Indeed, although petitioner's counsel has informed the undersigned that petitioner opposes this motion to intervene, petitioner does not assert that it will suffer any prejudice as a result of the intervention. (Stahl Decl., ¶ 2 & Exhibit 1 thereto.) 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, 387-88. [A party 's opposition to permissive intervention is an insufficient basis for denying leave to intervene].

Substantively, petitioner's grounds for opposing this motion are weak. Petitioner argues that this action will not "impair or impede" Intervenors' mission of advocating for an increase in the supply of housing and that Intervenors' interests are adequately represented by the existing parties to the action. (Stahl Decl., ¶ 2 & Exhibit 1 thereto.) However, counsel is mistakenly citing the more stringent standards for intervention *as of right* under CCP § 387(d)(1)(B). In this case, Intervenors are requesting *discretionary* intervention under CCP § 387(d)(2). The court may permit discretionary intervention under section (d)(2) whenever a person "has an interest in the matter in litigation…" In this case, as amply demonstrated above, Intervenors have a strong interest in the outcome of the litigation. In any event, for the reasons discussed above, the Intervenors' interests are *not* adequately represented by the defendants and will be impeded if this lawsuit is successful.

E. The 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 and AHLA respectfully request that the Court grant their motion for leave to intervene as Real Parties In Interests/Defendants.

Dated: April 16, 2021

MILLER STARR REGALIA

By: Kenneth Stahl

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