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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

CHILL THE BUILD, a California limited liability corporation,

Petitioner/Plaintiff,

v.

CITY OF MANHATTAN BEACH, a California municipal corporation; CITY COUNCIL OF THE CITY OF MANHATTAN BEACH; HIGHROSE EL PORTO LLC, a California limited liability company; Real Parties in Interest; and DOES ONE through ONE HUNDRED inclusive,

Respondents/Defendants.

CALIFORNIANS FOR HOMEOWNERSHIP, INC.; CALIFORNIA HOUSING DEFENSE FUND; and YIMBY LAW,

Proposed Intervenors.

Case No. 23STCP00474

REPLY IN SUPPORT OF MOTION FOR LEAVE TO INTERVENE

Assigned for all purposes to:
Hon. Curtis A. Kin (Dept. 82)

Action Filed: February 24, 2023
Trial Date: March 26, 2024

Hearing: September 14, 2023, 1:30 p.m.

I. INTRODUCTION

Housing delayed is housing denied. Petitioner knows that, which seems to be precisely why it has initiated this obstructive lawsuit. As Petitioner comes closer to admitting in its latest filing, its goal is to tie the Verandas Project up in process for months or years into the future. If it succeeds in doing so, it will undermine the Housing Accountability Act ("HAA")'s goal of producing more housing and harm the interests of Proposed Intervenors in furthering the objectives of the HAA.

In opposing the intervention motion, Petitioner insists that it is not seeking to have the project denied, but merely to have it subjected to an "independent environmental review"—something not actually required or authorized by any existing law. This distinction is meaningless for the purposes of the proposed intervention. As Proposed Intervenors have made clear, the City was required to *approve* the project, not to deny it *or* subject it to additional environmental review.

Mandating the additional review Petitioner seeks is just as unlawful as a denial would have been. And if the City had insisted on additional review rather than approving the project after reconsideration, Proposed Intervenors would have sued under the HAA just as they would have had the project been denied. Indeed, subjecting a ministerial project to environmental review *is* a denial of the ministerial permit, instead forcing the developer to proceed with the project as discretionary.

In any event, Petitioner's insistence that this case is just about environmental review is belied by its own pleadings. Petitioner chose to include causes of action under the HAA and state Density Bonus Law ("DBL"), neither of which call for any form of environmental review. Proposed Intervenors have a vested interest in the question whether these laws require approval of the project.

It bears repeating: this case is profoundly odd. The HAA and DBL require a city to make specific findings to *deny* a project. The Legislature enacted these laws because cities were *denying* too many projects. Petitioner seeks to turn these laws on their heads by arguing that they create obligations for cities seeking to *approve* projects. To our knowledge, this is the first time any party has attempted to reframe these laws in this way. As the state's primary HAA plaintiffs, it is only appropriate for the Court to allow Proposed Intervenors to help defend these critical laws against this abuse. All the more so here, as Proposed Intervenors planned to initiate HAA litigation on this very project. Accordingly, Proposed Intervenors respectfully request that their motion be granted.

II. ARGUMENT

A. Petitioner Chose To Plead Causes Of Action Under The HAA And DBL, Neither Of Which Create Requirements To Engage In Environmental Review, But Now Contends That This Lawsuit Merely Seeks Additional Environmental Review.

The Amended Petition alleges three separate causes of action under three separate laws: (1) the HAA, (2) the DBL, and (3) the California Environmental Quality Act ("CEQA").

Unlike CEQA, neither the HAA nor the DBL creates a requirement to engage in environmental review. Instead, both require local agencies to make specific factual findings about health or safety impacts if they wish to *deny* a project or *deny* DBL incentives:

> When a proposed housing development project complies with applicable, objective general plan, zoning, and subdivision standards and criteria, including design review standards, in effect at the time that the application was deemed complete, **but the local agency proposes to disapprove the project or to impose a condition that the project be developed at a lower density**, the local agency shall base its decision regarding the proposed housing development project upon written findings supported by a preponderance of the evidence on the record that . . . [t]he housing development project would have a specific, adverse impact upon the public health or safety unless the project is disapproved or approved upon the condition that the project be developed at a lower density.

(Gov. Code § 65589.5(j)(1) [HAA] [emphasis added].)

> The city, county, or city and county **shall grant** the concession or incentive requested by the applicant **unless** the city, county, or city and county makes a written finding, based upon substantial evidence . . . [that t]he concession or incentive would have a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon public health and safety or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact without rendering the development unaffordable to low-income and moderate-income households.

(Gov. Code § 65915(d)(1) [DBL] [emphasis added].)

These laws do not even mention environmental issues, except in two contexts:

First, the HAA recites the severe environmental harms caused by *denying* housing development projects—i.e., exactly the outcome Petitioner seeks here. (Gov. Code §§ 65589.5(a)(1)(A) ["The lack of housing, including emergency shelters, is a critical problem that threatens the economic, environmental, and social quality of life in California."]; (a)(1)(D) ["Many local governments do not give adequate attention to the economic, environmental, and social costs

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of decisions that result in disapproval of housing development projects, reduction in density of housing projects, and excessive standards for housing development projects."]; (a)(2)(A) ["The consequences of failing to effectively and aggressively confront this crisis are hurting millions of Californians, 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."]; (a)(2)(I) ["An additional consequence of the state's cumulative housing shortage is a significant increase in greenhouse gas emissions caused by the displacement and redirection of populations to states with greater housing opportunities, particularly working- and middle-class households. California's cumulative housing shortfall therefore has not only national but international environmental consequences."]; (b) ["It is the policy of the state that a local government not reject or make infeasible housing development projects, including emergency shelters, that contribute to meeting the need determined pursuant to this article without a thorough analysis of the economic, social, and environmental effects of the action . . . ."].

Second, the HAA provides that it does not alter the obligations created by CEQA. (Gov. Code §§ 65589.5(e).)

In sum, despite Petitioner's attempt to recharacterize the Amended Petition as merely addressing the need for environmental review—a requirement that could only arise out of Petitioner's CEQA cause of action—Petitioner asks the Court to invalidate the approval of the project under the HAA and DBL. For the reasons articulated in the moving papers, these are issues squarely within the sphere of Proposed Intervenors' legal interest.

And to be clear, the "independent environmental assessment" that Petitioner now says it is seeking is not a real requirement created by any real law. It is a concept that Petitioner has invented out of whole cloth. No such requirement would exist, as Petitioner characterizes it, even if CEQA did apply to the Verandas Project. But it is certainly not a requirement of the HAA or DBL.

B. <u>The City Was Required To Approve The Project Without Onerous Environmental Review, And If The Court Decides Otherwise, Proposed Intervenors' Interests Will Be Harmed.</u>

As recharacterized in Petitioner's opposition papers, Petitioner's goal in this litigation is to force the Verandas Project through Petitioner's preferred form of environmental review. This being

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their goal, Petitioner argues, Proposed Intervenors have no risk of being harmed through the outcome of this litigation because the City might again approve the project after the desired environmental review is complete. (Opp. at 8.)

This argument fundamentally misunderstands Proposed Intervenors' position. The Verandas Project was required to be approved *in late 2022*, based on the review that had been completed at that time. It was unlawful for the City to deny the project, which is why Proposed Intervenors threatened to sue after the City initially denied it. But it would have been just as unlawful for the City to force additional environmental review of the project, because the law required it to be ministerially approved without further environmental review. (M.B.M.C. § 10.84.010 ["Projects that qualify for a density bonus . . . shall be eligible for an administrative non-discretionary precise development plan."]; Pub. Res. Code § 21080 [only discretionary projects, not ministerial projects, are subject to CEQA].)

In essence, Petitioner's request to the Court is this: rescind the City's approval of the Verandas Project *as a ministerial project*, and force the City to instead consider it through a completely different application pathway, *as a discretionary project*. That is a conclusive legal determination that would harm Proposed Intervenors' interest in seeing this project approved as proposed—i.e., as a ministerial project.

Unnecessary and duplicative environmental review is a recognized driver of California's housing crisis. At best, it adds years of time to the project development timeline, increasing the cost of developing a project through holding costs and increased construction costs. At worst, CEQA lawsuits like this one force developers to pay expensive defense costs *and* lead to years-long delays. (*See* Christopher S. Elmendorf, *Beyond the Double Veto: Housing Plans As Preemptive Intergovernmental Compacts* (2019) 71 Hastings L.J. 79, 146; Jennifer Hernandez, *In the Name of the Environment Part III: CEQA, Housing, and the Rule of Law* (2022) 26 Chap. L. Rev. 57, 124.)

With these harms in mind, the Legislature has repeatedly recognized the critical importance of eliminating CEQA review in appropriate cases. (Stats. 2017, ch. 366 [SB 35] [eliminating CEQA review for qualifying mixed-income development projects]; Stats. 2022, ch. 647 [AB 2011] [requiring ministerial, CEQA-exempt approval of qualifying residential projects on commercially

zoned land].) In this case, it was the City itself that adopted a ministerial development pathway, complying with CEQA and the California Coastal Act at the time it created that pathway. For the City to now subject the Verandas Project to a convoluted environmental review process would create exactly the kind of harm that Proposed Intervenors were intending to protect against in their planned litigation against the City. For that reason, Proposed Intervenors are entitled to intervene.

C. The Environmental Impacts Of Delaying Or Preventing Housing Development Are Already At Issue In This Case.

Beyond the arguments regarding Proposed Intervenors' vested interest in seeing the Verandas Project approved under the HAA, Petitioner takes issue with Proposed Intervenors' intention to raise arguments related to the environmental impact of the inadequate development of housing in California's urban areas, suggesting that Proposed Intervenors are attempting to raise policy issues that are not already embraced by the pleadings in this case. (Opp. at 9-10.)

Not so. In the (unlikely) event that Petitioner prevails, the Court will have broad equitable discretion to determine the scope and nature of relief provided, and the Court is permitted to weigh the environmental impacts of Petitioner's request to rescind the approval of the project. (Pub. Res. Code § 21168.9; *Laurel Heights Improvement Association v. Regents of University of California* (1988) 47 Cal. 3d 376, 423-424 ["Section 21168.9 grants us the authority to stay all activity at Laurel Heights until the Regents certify a proper EIR. The question is whether we should do so. Because CEQA does not require us to enjoin the present activity, we rely on traditional equitable principles in deciding whether injunctive relief is appropriate. . . . A primary purpose of CEQA is to protect the environment. In light of our conclusion that there is substantial evidence to support the Regents' finding that the present activities will be mitigated, we believe CEQA will not be thwarted by allowing UCSF to continue its present activities at Laurel Heights."].)

III. CONCLUSION

Proposed Intervenors respectfully request that the Court grant their motion for leave to

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CALIFORNIANS FOR HOMEOWNERSHIP, INC.
LOS ANGELES, CA

intervene as intervenor respondents.

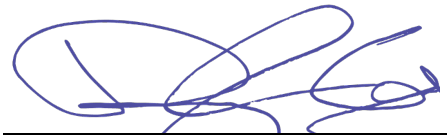
Dated: September 7, 2023

CALIFORNIANS FOR HOMEOWNERSHIP, INC.

By: 

Matthew P. Gelfand
Attorneys for Proposed Intervenor
Californians for Homeownership, Inc.

CALIFORNIA HOUSING DEFENSE FUND

By: 

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By: 

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PROOF OF SERVICE

I am a resident of the State of California and over the age of eighteen years, and not a party to this action. My business address is 525 S. Virgil Ave., Los Angeles, California 90020.

On September 7, 2023, I served the foregoing document described REPLY IN SUPPORT OF MOTION FOR LEAVE TO INTERVENE on the interested parties in this action as follows:

☒ by electronic service by email to the listed addresses through One Legal from the account associated with my email address, matt@caforhomes.org.

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

Executed on September 7, 2023.

Matthew P. Gelfand