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*Exempt from Filing Fees
Government Code § 6103*

9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF LOS ANGELES

12
13 **CALIFORNIA HOUSING DEFENSE
FUND,**

14 Petitioner and Plaintiff,

15 v.

16
17 **CITY OF LA CAÑADA FLINTRIDGE,**

18 Respondent and Defendant,

19 **600 FOOTHILL OWNER, LP,**

20 Real Party in Interest,

21 **PEOPLE OF THE STATE OF
22 CALIFORNIA, EX REL. ROB BONTA;
CALIFORNIA DEPARTMENT OF
23 HOUSING AND COMMUNITY
DEVELOPMENT,**

24 Petitioners-Intervenors.
25
26
27
28

Case No. 23STCP02614

**PEOPLE OF THE STATE OF
CALIFORNIA, EX REL. ROB BONTA,
AND CALIFORNIA DEPARTMENT OF
HOUSING AND COMMUNITY
DEVELOPMENT'S *EX PARTE*
APPLICATION TO INTERVENE;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT**

Date: December 14, 2023
Time: 8:30 a.m.
Dept: 86
Judge: Hon. Mitchell L. Beckloff
Trial Date:
Action Filed: July 25, 2023

1 **EX PARTE APPLICATION**

2 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

3 Pursuant to California Rules of Court 3.1200 through 3.1207, and Code of Civil Procedure
4 section 387, subdivisions (b) through (d), the People of the State of California (“People”), acting
5 by and through Attorney General Rob Bonta, and the California Department of Housing and
6 Community Development (“HCD”) (collectively, “the State” or “Petitioners-Intervenors”) request
7 that this Court grant the *ex parte* Application to Intervene (“Application”) in this matter on the
8 side of Petitioner-Plaintiff California Housing Defense Fund (“CalHDF”).¹ The State brings this
9 *ex parte* Application for leave to intervene in this action, and will do so on December 14, 2023 at
10 8:30 a.m. in Department 86 of the California Superior Court for the County of Los Angeles,
11 Stanley Mosk Courthouse, located at 111 N. Hill Street, Los Angeles, CA 90012. The State
12 brings this Application *ex parte*, rather than a noticed motion, given the briefing schedule set by
13 the Court and the upcoming December 29, 2023 opening brief deadline. The State respectfully
14 requests *ex parte* relief so as not to disrupt the Court’s briefing schedule, in the interest of judicial
15 economy, and to conserve the litigation resources of the parties in this matter.

16 The Attorney General and HCD are charged with the enforcement of, among others, state
17 housing laws as set forth under California Government Code section 65585, subdivision (j). The
18 Attorney General, on behalf of the People, is also obligated under the California Constitution to
19 take whatever legal action is necessary to ensure that the laws of the state are uniformly and
20 adequately enforced. (Cal. Const. art. V, § 13; Gov. Code, § 65585, subd. (n).) HCD is the state
21 agency responsible for ensuring local government compliance with the Housing Accountability
22 Act and Housing Element Law, statutory schemes that are integral to any attempt to ensure

23 _____
24 ¹ Pursuant to California Rule of Court 3.1202(a), the following are known parties and
25 attorneys in this matter: Respondent-Defendant City of La Cañada Flintridge, represented by
26 Peter C. Sheridan, Esq., 10250 Constellation Blvd., 19th Floor, Los Angeles, CA 90067, (310)
27 282-6243, psheridan@glaserweil.com; Petitioner-Plaintiff California Housing Defense Fund,
28 represented by Dylan Casey, Esq., 360 Grand Avenue #323, Oakland CA, 94160, (443) 223-
8231, dylan@calhdf.org, and Alex Gourse, Esq., 101 Mission Street, Sixth Floor, San Francisco,
CA 94105, (415) 433-6830, agourse@rbgg.com; and Real Party in Interest 600 Foothill Owner
LP, represented by Ryan M. Leaderman, Esq., 400 S. Hope Street, 8th Floor, Los Angeles, CA
90071, (213) 896-2405, ryan.leaderman@hklaw.com.

1 sufficient and just housing across the state. (Health & Saf. Code, § 51252 and Gov. Code §
2 65585, subs. (j) and (l).) Consequently, the State has a direct interest in ensuring that
3 Respondent-Defendant City of La Cañada Flintridge (“Respondent”) removes all impediments to
4 lawful housing development, and ceases attempts to circumvent validly enacted state law. Thus,
5 Petitioners-Intervenors seek intervention as a matter of right to fulfill statutory enforcement
6 mandates.² (Code Civ. Proc., § 387, subd. (d)(1)(B).)

7 Should the Court deny Petitioners-Intervenors’ request to intervene pursuant to Code of
8 Civil Procedure section 387, subdivision (d)(1)(B), the State respectfully requests that the Court
9 exercise its discretion and permit intervention immediately pursuant to Code of Civil Procedure
10 section 387, subdivision (d)(2). The State has a direct and immediate interest in this case, and its
11 involvement will not enlarge the existing issues, which largely are subject to an administrative
12 record and which involve many of the same enforcement statutes as those raised by CalHDF.
13 Intervention in this matter also outweighs any opposition by Respondent, a local government that
14 is statutorily required to—but has repeatedly failed to—comply with state housing laws. Finally,
15 the State’s request is timely and will not impact the prompt resolution of the issues presented in
16 this matter.

17 Pursuant to California Rules of Court 3.1203, subdivision (a), and 3.1204, on December 12,
18 2023, the State provided all parties with copies of this Application, supporting documents, a
19 [Proposed] Order, and the [Proposed] Petition for Writ of Mandate and Complaint for Declaratory
20 Relief. CalHDF and Real Party in Interest 600 Foothill Owner, LP, support and stipulate to this *ex*
21 *parte* Application. The State awaits a response from Respondent and will advise the Court
22 whether Respondent intends to oppose this Application.


23
24 ² The State respectfully requests intervention in this action as a matter of right at this time
25 pursuant to Code of Civil Procedure section 387, subdivision (d)(1)(B), given the immediate and
26 exigent circumstances of this case, including the forthcoming merits hearing and briefing
27 schedule. The State also requests permissive intervention pursuant to Code of Civil Procedure
28 section 387, subdivision (d)(2), in the alternative. However, as of January 1, 2024, the Petitioners-
Intervenors will have an “unconditional right to intervene” in cases such as this one, which
involve enforcement of housing law, pursuant to Government Code section 65585.01 (added by
AB 1485, Stats. 2023, ch. 763). Subsequently, the State will be able to move or apply for
intervention pursuant to Code of Civil Procedure section 387, subdivision (d)(1)(A).

1 This *ex parte* Application is based on the accompanying Memorandum of Points and
2 Authorities; the declaration of Nina Lincoff, Esq., attached as Exhibit A; the [Proposed] Order
3 Granting the Application, attached as Exhibit B; the [Proposed] Writ Petition and Complaint for
4 Declaratory Relief; the pleadings on file with the Court in this action; and such other matters
5 which may be brought to the attention of this Court before or during the hearing on this
6 Application.

7
8 Dated: December 12, 2023

Respectfully submitted,

9 ROB BONTA
10 Attorney General of California
11 CHRISTINA BULL ARNDT
12 DAVID PAI
13 Supervising Deputy Attorneys General

14 
15 _____
16 NINA LINCOFF
17 Deputy Attorney General
18 *Attorneys for Plaintiff*
19 *California Department of Housing and*
20 *Community Development*

1 **INTRODUCTION**

2 This matter originated with Respondent’s repeated violations of critical state housing laws,
3 including laws intended to address the state’s ongoing housing crisis. Specifically, Respondent’s
4 denial of the Foothill Owner application violated the Housing Accountability Act (“HAA”) by
5 foreclosing a “Builder’s Remedy” application process to which the developer was entitled. (Gov.
6 Code, § 65589.5, subd. (d)(5).) In addition, Respondent’s stated “self-certification” of its housing
7 element violated Housing Element Law, which vests in HCD alone the power to make a finding
8 of substantial compliance, as detailed below.

9 In this case, CalHDF seeks: a writ of mandate, pursuant to Code of Civil Procedure section
10 1094.5, to set aside the decision of Respondent to deny a housing development application for a
11 project located at 600 Foothill Boulevard; and a declaratory judgment, pursuant to Code of Civil
12 Procedure section 1060, that Respondent did not have a housing element substantially compliant
13 with state law from October 16, 2021, through November 17, 2023, and, therefore, that
14 Respondent is legally compelled to approve the Foothill Boulevard application; and costs of suit
15 and attorneys’ fees.

16 HCD is the state agency with primary responsibility to enforce state housing laws. (Gov.
17 Code §§ 65585, subds. (j), (k).) In this capacity, HCD has repeatedly sought Respondent’s
18 voluntary compliance with these laws, to no avail. HCD issued Respondent advice letters over a
19 multiple-year period regarding its draft housing elements, ultimately resulting in the issuance of a
20 Notice of Violation (“NOV”) on June 8, 2023, attached as Exhibit C. To redress these violations
21 and protect the important public interests at stake here, the State seeks to intervene in CalHDF’s
22 lawsuit against Respondent, which is still in its nascent stages. The State brings this Application
23 *ex parte*, given the briefing schedule set by the Court. The State respectfully requests *ex parte*
24 relief so as not to disrupt the Court’s briefing schedule, in the interest of judicial economy, and to
25 conserve the litigation resources of the parties in this matter.

26 The State has a mandatory right to intervene in this case, and has a direct interest in the
27 litigation. State housing laws charge the Attorney General and HCD with a statutory duty to
28 protect the state’s important legal and policy interests in removing unlawful constraints on

1 housing development. These important state interests are at the heart of this litigation. Without
2 the State’s participation, a final disposition, or even a ruling or order on a substantive issue, will
3 impair putative Petitioners-Intervenors’ statutory duties to enforce state housing laws and to
4 protect the important public interests at stake. Moreover, a private party like CalHDF cannot
5 fulfill the State’s role as a public prosecutor. The State seeks to intervene early in this litigation
6 and to participate in the merits briefing process. The Court should grant the State’s timely
7 Application for leave to intervene as a matter of right.

8 Additionally, Government Code section 65585.01 (added by AB 1485, Stats. 2023, ch.
9 763)—which provides the State an “unconditional right to intervene” in cases involving
10 enforcement of housing laws—becomes effective on January 1, 2024. If necessary, the State will
11 move to intervene pursuant to Code of Civil Procedure section 387, subdivision (d)(1)(A) at that
12 time. Nevertheless, the State is respectful of the ongoing pace of litigation in this matter, and
13 seeks to intervene at a time which will cause minimal to no disruption to the litigation efforts of
14 the other parties and the Court’s schedule.

15 In the alternative, and should the Court deny the State’s Application to intervene as of
16 right, putative Petitioners-Intervenors’ request also meets the permissive intervention standard.
17 The [Proposed] Petition for Writ of Mandate and Complaint for Declaratory Relief will not
18 enlarge the issues in the action because the State’s asserted claims overlap with CalHDF’s, and
19 arise from the same operative facts and unlawful administrative denial. (See, e.g., Ex. A,
20 Proposed Petition, ¶¶ 35-45.) In addition, the State has an undisputable right to enforce HAA
21 violations against Respondent; intervention favors judicial economy compared to Petitioners-
22 Intervenors filing a separate action. Allowing intervention now will avoid inconvenience to the
23 Court and parties, and prevent the risk of duplicative or inconsistent rulings in parallel actions.

24 Consequently, the Court should grant the State’s Application for leave to intervene.

25 **STATEMENT OF FACTS**

26 **I. THE STATE ENFORCES STATE OF CALIFORNIA HOUSING LAWS.**

27 HCD is the state agency responsible for enforcing housing laws in California, and has
28 “primary responsibility for development and implementation of housing policy.” (See, e.g.,

1 Health & Saf. Code, § 50152; Gov. Code, §§ 65585, subd. (j), (j)(1), (j)(4), and (j)(6).) HCD’s
2 responsibilities include, but are not limited to, advising cities and the public on state housing law
3 and policy, developing guidelines on housing elements, reviewing each local government’s draft
4 and final housing elements, and determining whether each substantially complies with Housing
5 Element Law. (Health & Saf. Code, §§ 50456, 50459, 50464; Gov. Code, § 65585, subds. (a)-
6 (e).)

7 **II. BETWEEN OCTOBER 2021 AND NOVEMBER 2023, RESPONDENT FAILED TO COMPLY**
8 **WITH HOUSING ELEMENT LAW.**

9 Respondent’s failure to comply with Housing Element Law dates back to October 15, 2021,
10 when Respondent failed to meet its deadline to adopt a housing element in substantial compliance
11 with Housing Element Law.

12 Pursuant to Housing Element Law, a municipality is required to pass, as part of its general
13 plan, a housing element that makes adequate provisions for the housing needs of all income
14 groups. The housing element statutes require a local jurisdiction to first submit a draft housing
15 element to HCD *before* a final, compliant housing element is adopted by the jurisdiction. (Gov.
16 Code, § 65585, subd. (b).) HCD “shall determine” whether the draft element substantially
17 complies with the law. (Gov. Code, § 65585, subd. (d).) If HCD finds that the draft element does
18 not substantially comply with California’s Housing Element Law, the city’s legislative body must
19 either: (1) change the draft element to bring it into substantial compliance; or (2) adopt the draft
20 element without changes, but include written findings in its resolution of adoption that explain
21 why the legislative body “believes” that the draft element is in substantial compliance despite
22 HCD’s findings. (Gov. Code, § 65585, subd. (f).) As soon as the city adopts its element, it must
23 submit a copy to HCD, which then reviews the adopted element and reports its findings to the
24 city. (Gov. Code, § subds. (g), (h).)

25 Respondent remained out of substantial compliance with Housing Element Law until
26 November 17, 2023, when HCD declared Respondent’s housing element in substantial
27 compliance with state law.
28

1 Respondent's noncompliance began, relevant to this action, on October 6, 2021, when
2 Respondent submitted its initial draft 2021-2029 housing element to HCD, days before the
3 October 15, 2021 deadline. Then, on December 3, 2021, HCD informed Respondent in writing
4 that the draft housing element would require significant revisions in order to comply with
5 Housing Element Law.

6 Next, Respondent delayed for almost a year, until October 4, 2022, when it adopted a
7 revised draft housing element via a resolution. The draft housing element included neither the
8 changes necessary to address HCD's findings, nor written findings explaining why Respondent
9 believed the draft element substantially complied with Housing Element Law, in violation of
10 Government Code section 65585, subdivision (f). Then, on December 3, 2022, HCD sent
11 Respondent a letter stating that the adopted housing element was not in substantial compliance
12 with Housing Element Law, including that the draft element failed to "affirmatively further fair
13 housing" in accordance with applicable law, and failed to include an inventory of land suitable
14 and available for residential development in a manner consistent with the applicable Regional
15 Housing Needs Allocation ("RHNA") mandate.

16 Subsequently, on February 21, 2023, Respondent adopted another revised housing element
17 that adequately addressed HCD's deficiency findings, but improperly concluded that the prior
18 housing element was in substantial compliance with Housing Element Law, in effect "self-
19 certifying" its housing element. However, a municipality has no authority to self-certify and
20 determine that its own adopted housing element is in substantial compliance with Housing
21 Element Law. Per statutory authority, HCD is charged with reviewing draft and adopted housing
22 elements, and determining whether such elements substantially comply. (Gov. Code, § 65585,
23 subs. (d), (h).) The fact that HCD makes the final determination as to housing element
24 compliance is bolstered by HCD's authority to, at any time a local government violates state
25 housing element law, revoke a previous compliance determination. (See Gov. Code, § 65585,
26 subd. (i)(1)(B).)

27 On April 24, 2023, HCD found that the February 2023 housing element was not in
28 substantial compliance because it was adopted more than one year past the statutory due date of

1 October 15, 2021, such that Respondent could not be deemed in substantial compliance until it
2 completed all required rezones. (Gov. Code, §§ 65588, subd. (e)(4)(C)(iii), 65585, subd. (f).)

3 **III. RESPONDENT DENIED A VALID BUILDER’S REMEDY APPLICATION IN VIOLATION OF**
4 **THE HAA.**

5 Both CalHDF and real party 600 Foothill Owner, LP’s (“Foothill Owner’s”) interests in this
6 matter flow from Respondent’s failure to substantially comply with Housing Element Law and
7 the subsequent refusal to process a “Builder’s Remedy” application in violation of the HAA.

8 Subdivision (d)(5) of the HAA, colloquially known as the Builder’s Remedy, allows a local
9 agency to disapprove an affordable housing project that “is inconsistent with both the
10 jurisdiction’s zoning ordinance and general plan use designation as specified in any element of
11 the general plan” ***if*** the jurisdiction ***has*** adopted a housing element “that is in substantial
12 compliance” with Housing Element Law. (Gov. Code, § 65589.5, subd. (d)(5).) As set forth
13 above, Respondent ***did not have*** a housing element certified by HCD to be in substantial
14 compliance with Housing Element Law on November 14, 2022, the date Foothill Owner
15 submitted a qualifying Builder’s Remedy application. Accordingly, the Builder’s Remedy
16 provides that Respondent ***could not*** decline to process an affordable housing project merely
17 because the project is inconsistent with its zoning ordinances or general plan.

18 The at-issue Foothill Owner application concerns the redevelopment of a former Christian
19 Science Reading Room within Respondent’s boundaries located at 600 Foothill Boulevard to a
20 mixed-use project with 80 mixed-income residential dwelling units, of which 20 percent (16
21 units) are affordable to lower-income units (“Foothill Project”). Foothill Owner submitted a
22 preliminary application for the project to Respondent on November 14, 2022, specifically noting
23 that, because Respondent had not adopted a substantially compliant housing element at the time
24 of application, it could not lawfully deny the project based on inconsistency with zoning
25 ordinances or the general plan.

26 The entitlement process continued, and on January 13, 2023, Foothill Owner submitted a
27 formal application for the Foothill Project. Then, on February 10, 2023, Respondent issued an
28 incompleteness determination in response to the formal application. On March 1, 2023,

1 Respondent issued a second incompleteness determination, asserting that the Builder’s Remedy
2 did not apply to the Foothill Project. Foothill Owner timely appealed the second incompleteness
3 determination on March 9, 2023, and an appeal hearing took place on May 1, 2023. Respondent’s
4 city council unanimously denied the appeal.³

5 HCD issued the NOV to Respondent on June 8, 2023. The NOV stated that Respondent’s
6 denial of Foothill Owner’s March 9, 2023 appeal constituted a violation of Housing Element Law
7 and the HAA. Specifically, HCD concluded that Respondent “cannot ‘backdate’ its housing
8 element compliance date to an earlier date so as to avoid processing a Builder’s Remedy
9 application” and that the adopted housing element “did not substantially comply with State
10 Housing Element Law, regardless of any declaration by the City.”

11 **IV. THE STATE REQUESTS INTERVENTION IN THIS ACTION.**

12 On July 25, 2023, CalHDF filed this action to challenge Respondent’s denial of the Foothill
13 Owner application. A merits hearing is set for March 1, 2024, and opening briefs are due
14 December 29, 2023.

15 The State seeks to intervene in this matter during the early procedural stages so as not to
16 disrupt the merits briefing schedule set forth by the Court.

17 **LEGAL STANDARD**

18 A non-party may seek leave to intervene in an existing civil action by noticed motion or *ex*
19 *parte* application. (Code of Civ. Proc., § 387, subd. (c).) Courts liberally construe section 387 in
20 favor of allowing intervention to fulfill the statute’s goals “to protect the interests of those who
21 may be affected by [a] judgment . . . and to obviate delay and multiplicity of actions.” (*San*
22 *Bernardino Cnty. v. Harsh Cal. Corp.* (1959) 52 Cal.2d 341, 346 (*Harsh Cal. Corp.*) [citations
23 omitted]; *Crestwood Behavioral Health, Inc. v. Lacy* (2021) 70 Cal.App.5th 560, 572.) This
24 comports with “California procedural law[’s] . . . solicitude, if not an altogether outright

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

1 preference, for the economies of scale achieved by consolidating related cases into a single,
2 centrally managed proceeding.” (*Petersen v. Bank of America Corp.* (2014) 232 Cal.App.4th 238,
3 248-249 [applying this “outright preference” to the joinder statute, Code Civ. Proc., § 378].)

4 ARGUMENT

5 I. LEAVE TO INTERVENE AS A MATTER OF RIGHT.

6 A. The State Seeks Intervention as a Matter of Right to Enforce the State 7 Housing Laws at Issue in this Action.

8 The Legislature has declared the State’s lack of affordable housing “a critical statewide
9 problem.” (Gov. Code, § 65589.5, subd. (g).) Indeed, the Legislature found that the State “has a
10 housing supply and affordability crisis of historic proportions.” (Gov. Code, § 65589.5, subd.
11 (a)(2)(A).) “The consequences of failing to effectively and aggressively confront this crisis are
12 hurting millions of Californians, robbing future generations of the chance to call California home,
13 stifling economic opportunities for workers and businesses, worsening poverty and homelessness,
14 and undermining the state’s environmental and climate objectives.” (*Ibid.*) As the state agency
15 with primary responsibility for enforcing local government compliance with state housing laws,
16 HCD has a direct interest in ensuring that Respondent ceases any violations of the HAA, as
17 evidenced by the NOV issued by HCD to Respondent in June, and in achieving clarity regarding
18 a local jurisdiction’s lack of authority regarding certification of a housing element. (Code Civ.
19 Proc., § 387, subd. (d)(1)(B).)

20 B. The State Will Suffer Irreparable Harm if Intervention is Denied.

21 The disposition of this action may impede or impair the State’s ability to protect its
22 interests in enforcing state housing laws. A merits hearing is set for March 1, 2024, and opening
23 briefs are due on December 29, 2023. Requiring Petitioners-Intervenors to file a separate action
24 will prevent the State from participating in the merits process in this matter, and the State is
25 prepared to comply with the briefing schedule as set forth by the Court.

26 Moreover, early resolution in this case without the State’s involvement will deprive the
27 State of its housing enforcement duties and could undermine the Legislature's goals ensuring
28 adequate and just housing across the state. Rulings in this case without the State’s participation

1 could also set precedents on issues the State might raise in parallel or future enforcement actions.
2 (*Cf. Lewis v. Cnty. of Sacramento* (1990) 218 Cal.App.3d 214, 217-219 [holding that a party
3 whose failure to intervene in federal action was collaterally estopped from seeking relief in a state
4 action].) If the parties settle their dispute, the impact of a potential settlement without the State’s
5 participation risks harming important policy interests in fully redressing the Respondent’s
6 unlawful constraints on housing. (*People v. Super. Ct. (Good)* (1976) 17 Cal.3d 732, 737 [“The
7 direct interest of intervening parties may be harmed or even defeated as surely by judgment
8 following compromise as by judgment following trial.”].)

9 Each of these threats to the State’s interests in enforcing housing laws may cause
10 irreparable harm and confirm that it is entitled to intervene in this case. (See, e.g., *Lacy, supra*, 70
11 Cal.App.5th at pp. 579-580.)

12 **C. The State’s Interests Are Not Presently Represented by Any Party.**

13 No existing party can adequately represent the State’s interests. HCD is the statewide entity
14 charged with implementing and enforcing the whole of Housing Element Law and the HAA, and
15 the Attorney General has an inherent and important interest in full compliance with the laws of
16 the State of California. Without the State’s presence in this case, there is a risk that the State’s
17 statutory authority will be eroded by misguided legal arguments such as the ones proffered by
18 Respondent. Additionally, if the State is not permitted to intervene, HCD would not achieve
19 clarity regarding its ability to enforce its current NOV against Respondent, as well as its ability to
20 support petitioners such as CalHDF and applicants such as Foothill Owner, which are attempting
21 to ensure compliance with state law, including the Builder’s Remedy.

22 **D. The Application to Intervene is Timely.**

23 Whether the State’s Application to intervene is timely is determined by the totality of the
24 circumstances. (*Lacy, supra*, 70 Cal.App.5th at p. 574.) Courts focus on three factors: (1) the
25 stage of the proceedings; (2) the prejudice to other parties; and (3) the reason for the delay. (*Id.* at
26 pp. 574-575.) “Delay in itself does not make a request for intervention untimely.” (*Id.* at p. 574.)
27 Prejudice to existing parties is “the most important consideration in deciding whether a[n
28

1 application] for intervention is timely.” (*Ibid.* [citation omitted].) “California courts have found
2 intervention to be timely based solely on the absence of such prejudice,” particularly, where, as
3 here, the intervening parties have a direct interest in a case. (*Ibid.* [citation omitted].) The State
4 seeks to intervene at an early stage in these proceedings, and the prejudice to the other parties is
5 minimal to nonexistent. For Respondent, intervention in this matter by the State conserves
6 litigation resources as opposed to having to defend a separate action. Finally, any delay in seeking
7 intervention on behalf of the State is nominal, and well within the statutory deadline for the State
8 to seek independent action pursuant to Government Code section 65585, subdivision (p).

9 **II. IN THE ALTERNATIVE, THE STATE REQUESTS THAT THE COURT EXERCISE ITS**
10 **DISCRETION AND PERMIT INTERVENTION.**

11 Alternatively, the Court should grant permissive intervention to the State under Code of
12 Civil Procedure section 387, subdivision (d)(2). “Permissive intervention is appropriate if: ‘(1)
13 the proper procedures have been followed; (2) the nonparty has a direct and immediate interest in
14 the action; (3) the intervention will not enlarge the issues in the litigation; and (4) the reasons for
15 the intervention outweigh any opposition by the parties presently in the action.’” (*Carlsbad*
16 *Police Officers Assn. v. City of Carlsbad* (2020) 49 Cal.App.5th 135, 148 [quoting *Reliance Ins.*
17 *Co. v. Super. Ct.* (2000) 84 Cal.App.4th 383, 386] [citation omitted]; *Pappas v. State Coastal*
18 *Conservancy* (2021) 73 Cal.App.5th 310, 317.) The court “must balance the interests of those
19 affected by a judgment against the interests of the original parties in pursuing their case
20 unburdened by others.” (*S. Coast Air Quality Mgmt. Dist. v. City of Los Angeles* (2021) 71
21 Cal.App.5th 314, 320 [citing *City & Cnty. of San Francisco v. State* (2005) 128 Cal.App.4th
22 1030, 1036].)

23 Permissive intervention is appropriate here. First, the State has followed the proper
24 procedures of Code of Civil Procedure section 387 in seeking leave to intervene in a timely
25 fashion, before opening merits briefs are due. Second, the State has a direct and immediate
26 interest in the lawsuit, as discussed above in Part I.A. Third, intervention will not enlarge the
27 issues raised by the original parties, as the State’s petition focuses substantially on the existing
28 issues in the case. Finally, CalHDF and Foothill Owner stipulate to and welcome the State’s

1 intervention. The State awaits a response from Respondent and will advise the Court whether
2 Respondent intends to oppose this Application. Because the State and Respondent dispute the
3 applicability of Housing Element Law and the HAA, the rights of all parties can only be
4 adequately addressed with the State's involvement in this action. Accordingly, the Court should
5 grant the State's request to intervene.


6 **CONCLUSION**

7 For the foregoing reasons, the State respectfully requests that the Court grant the *ex parte*
8 Application to intervene. A copy of the [Proposed] Petition for Writ of Mandate and Complaint
9 for Declaratory Relief is enclosed.

10
11 Dated: December 12, 2023

Respectfully submitted,

12
13 ROB BONTA
14 Attorney General of California
15 CHRISTINA BULL ARNDT
16 DAVID PAI
17 Supervising Deputy Attorneys General

18 
19 _____
20 NINA LINCOFF
21 Deputy Attorney General
22 *Attorneys for Petitioners-Intervenors*
23 *People of the State of California, ex rel.*
24 *Attorney General Rob Bonta, California*
25 *Department of Housing and Community*
26 *Development*