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19 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
20 **COUNTY OF LOS ANGELES, STANLEY MOSK COURTHOUSE**

21 TNHC CANYON OAKS, LLC, a Delaware
22 Limited Liability Company,

23 Petitioner/Plaintiff,

24 v.

25 CITY OF CALABASAS, CITY COUNCIL
26 OF THE CITY OF CALABASAS; and DOES
27 1 through 100, inclusive,

28 Respondents/Defendants.

Case No. 21STCP01819 (Consolidated with
Case No. 21STCP02726)

**APPLICANTS' NOTICE OF MOTION
AND MOTION TO INTERVENE;
DECLARATIONS IN SUPPORT
THEREOF**

Date: March 3, 2022

Time: 1:30 PM

Dept.: 82

Action Filed: June 4, 2021

Trial Date: June 2, 2022

BUILDING INDUSTRY ASSOCIATION OF
SOUTHERN CALIFORNIA,

Petitioner/Plaintiff,

v.

CITY OF CALABASAS and CITY
COUNCIL OF THE CITY OF CALABASAS,

Respondents/Defendants.

1 **NOTICE OF MOTION AND MOTION TO INTERVENE**

2 TO ALL PARTIES AND COUNSEL OF RECORD:

3 Please take notice that the Center for Biological Diversity, Sierra Club, and California Native
4 Plant Society (collectively, “Applicants”) move to intervene in this matter. The Motion will be heard
5 before the Honorable Mary H. Strobel on March 3, 2022 at 1:30 PM in Department 82, located at
6 111 North Hill Street, Los Angeles, California, 90012.

7 Applicants seek leave to intervene as Defendants and Respondents in this case as a matter of
8 right pursuant to California Code of Civil Procedure section 387, subdivision (d)(1). Alternatively,
9 Applicants request leave to intervene with the Court’s permission pursuant to California Code of
10 Civil Procedure section 387, subdivision (d)(2). This Motion to Intervene is based on the Notice,
11 Motion, Memorandum of Points and Authorities, attached Declarations, exhibits, papers, and any
12 necessary oral arguments heard before the Court on this Motion.

13
14 DATED: November 24, 2021

CENTER FOR BIOLOGICAL DIVERSITY

15
16
17 By: 

John P. Rose
Aruna Prabhala
John Buse

18
19 Attorneys for Applicant Intervenors CENTER FOR
20 BIOLOGICAL DIVERSITY, SIERRA CLUB, and
21 CALIFORNIA NATIVE PLANT SOCIETY
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 In May 2021, the City of Calabasas and its City Council (“City”) voted to deny approval of the
4 West Village Project (“Project”), a mixed-use development with 180 residential units proposed in a very
5 high fire hazard severity zone that recently burned in the Woolsey Fire. Thereafter, in June 2021, the
6 project proponent, TNHC Canyon Oaks, LLC (“Plaintiff”) filed a Petition for Writ of Mandate and a
7 Complaint alleging that the City violated numerous laws including the Housing Accountability Act and
8 Housing Crisis Act. The Building Industry Association of Southern California (“BIASC”) filed a separate
9 action in August 2021 alleging similar claims, which has since been consolidated with TNHC’s action for
10 the purposes of the writ briefing and hearing.

11 The Center for Biological Diversity (“Center”), Sierra Club, and California Native Plant Society
12 (“CNPS”) [collectively, “Applicants” or “Applicant Intervenors”] file this Memorandum in Support of
13 their Motion to Intervene in this action to join the City in defending its decision to deny approval of the
14 Project and decline to certify its Amended Environmental Impact Report (“EIR”). Pursuant to California
15 Code of Civil Procedure section 387, Applicants seek intervention as-of-right, and, alternatively, by
16 permission. Through counsel, Plaintiff and BIASC have indicated that they oppose this intervention,
17 while the City does not oppose this intervention.

18 As outlined below, Applicants meet the criteria for both types of intervention. Applicants have
19 demonstrated significant interests implicated in this action including (1) the proper application and
20 interpretation of the California Environmental Quality Act (“CEQA”) in conjunction with other laws
21 such as the Housing Accountability Act and Housing Crisis Act; (2) ensuring the conservation and
22 protection of wildlife and plants, and reducing wildfire risk in the decision-making process for the Project
23 and similar Projects; and (3) recreational, scientific, aesthetic, and conservation interests in the wildlife,
24 plants, and habitats in and adjacent to the Project area, including the Santa Monica Mountains.

25 Applicants seek to intervene because a judgment invalidating the City’s decision would harm
26 Applicants’ interests by undermining the application of CEQA and leading to development on the Project
27 site, resulting in the destruction of wildlife habitat and increased wildfire risk. No existing party
28

adequately represents Applicants’ specific interests in wildlife and plant conservation, ensuring science-based limits on development in fire-prone areas, and the robust enforcement and interpretation of CEQA to protect the environment. Applicants respectfully request that the Court grant this Application.

II. APPLICANT INTERVENOR’S INTERESTS AND THEIR MEMBERS INTERESTS

The Center, Sierra Club, and CNPS are conservation organizations with expertise and interest in wildlife and plant conservation, land use planning, and the proper application and enforcement of CEQA.

The Center has more than 89,000 active members. (Declaration of Elizabeth Reid-Wainscoat [“Reid-Wainscoat Decl.”] ¶ 5.) The Center believes that the health and wellbeing of humanity depends on the preservation of our natural ecosystems and the plants and animals that keep these systems in balance. (Reid-Wainscoat Decl. ¶ 6.) The Center’s mission is to ensure the survival of species as well as the habitats they need to survive. (*Id.*) Towards this end, the Center uses science and environmental laws to advocate for the protection of species, habitats, and sustainable communities throughout the United States and abroad. (Reid-Wainscoat Decl. ¶ 4.) The Center seeks to protect wildlife in Los Angeles County and the Santa Monica Mountains including species such as the mountain lion, which was provisionally listed under the state endangered species act in response to a petition authored by the Center. (*Id.* ¶ 7.) The Center also uses CEQA as a tool to push for science-based land use decisions that support both wildlife and people. (*Id.* ¶ 9.)

Sierra Club was founded in 1892 and the Angeles Chapter—which was previously named the Southern California Chapter—was founded in 1911. (Declaration of Morgan Goodwin [“Goodwin Decl.”] ¶ 5.) The Sierra Club’s mission is “[t]o explore, enjoy and protect the planet. To practice and promote the responsible use of the earth’s ecosystems and resources; to educate and enlist humanity to protect and restore the quality of the natural and human environment; and to use all lawful means to carry out those objectives.” (Goodwin Decl. ¶ 6.) The Angeles Chapter created the Wildland Urban Wildfire Committee to address the risks associated with building in the Wildland-Urban Interface/Intermix and influencing policies to reduce those dangers while protecting the environment. (Goodwin Decl. ¶ 8.) Sierra Club supports a robust CEQA review process for development and believes that CEQA is one of

1 the best tools Californians have for engagement in decisions affecting wildlife, traffic, air quality and
2 many other aspects of proposed development. (Goodwin Decl. ¶ 9.)

3 CNPS is a non-profit environmental organization with more than 11,000 members in 35 local
4 chapters across California and Baja California, Mexico. (Declaration of Nicholas Jensen [“Jensen Decl.”]
5 ¶ 4.) CNPS’s mission is to protect California’s native plant heritage and preserve it for future generations
6 through the application of science, research, education, and conservation. (*Id.*) CNPS works closely with
7 decision-makers, scientists, and local planners to advocate for well-informed policies, regulations, and
8 land management practices. (*Id.*) CNPS routinely engages on issues relating to wildfire, fuel management
9 activities, and fire suppression activities which have impacts on native plants and habitats. (Jensen Decl.
10 ¶ 6.) CNPS also provides comments as part of the CEQA process to decision-makers on projects that may
11 have impacts on impacts to native plants, habitats, wildfire, and greenhouse gas emissions. (Jensen Decl.
12 ¶ 7.)

13 Each Applicant Intervenor has staff, members, and/or supporters who work, reside, and/or
14 recreate in and around the City of Calabasas and within Los Angeles County, including in the Santa
15 Monica Mountains. (Reid-Wainscoat Decl. ¶¶ 2-5, 13; Jensen Decl. ¶¶ 7-8; Goodwin Decl. ¶¶ 2-5). These
16 staff, members, and supporters rely on conservation efforts and preservation of wildlife and plants and
17 their habitat to promote healthy ecosystems; enjoy observing and photographing wildlife and plants;
18 enjoy hiking and recreating in their habitat, and conduct scientific studies of wildlife and plant
19 populations. (Reid-Wainscoat Decl. ¶¶ 5 & 13; Jensen Decl. ¶ 8; Goodwin Decl. ¶ 4, 6.) The interests of
20 these staff, members, and/or supporters have already been harmed by habitat fragmentation and urban
21 development, and will be further harmed if the litigation against the City is successful. (Reid-Wainscoat
22 Decl. ¶¶ 13-14.)

23 Applicant Intervenors participated in the administrative process in urging the City to decline
24 approval of the Project and EIR. (Reid-Wainscoat Decl. ¶ 11; Goodwin Decl. ¶ 11; Jensen Decl. ¶ 9.).
25 Applicant Intervenors attended meetings, provided oral testimony at public hearings, submitted written
26 comments and presented research findings to aid the City in its decision-making. (*Id.*)

Applicant Intervenor has an interest in affirming the City’s authority under CEQA to decline to approve dangerous or environmentally-damaging projects, and ensure that other laws are not interpreted to restrict this authority. (Reid-Wainscoat Decl. ¶¶ 9, 10, 11, 14; Goodwin Decl. ¶¶ 6, 9, 13; Jensen Decl. ¶¶ 7, 8, 9.) Plaintiff alleges that, in declining to approve the Project, the City violated the Housing Accountability Act and Housing Crisis Act. (Verified Petition for Writ of Mandate ¶¶ 61-69.) As discussed below, if Plaintiff prevails, Applicant Intervenor’s missions and the interests of their staffs, members, and supporters in ensuring the proper application of CEQA would be directly and adversely affected.

III. ARGUMENT

California Code of Civil Procedure offers two methods for applicants to intervene in a matter: intervention as-of-right and permissive intervention. (Cal. Civ. Proc. Code § 387.) Intervention is intended to “promote fairness by involving” all affected parties. (*Simpson Redwood Co. v. State* (1987) 196 Cal.App.3d 1192, 1199.) Courts recognize that California Code Civil Procedure section 387 “should be liberally construed in favor of intervention.” (*City of Malibu v. Cal. Coastal Comm’n* (2005) 128 Cal.App.4th 897, 902.) Applicants meet the requirements for both types of intervention.

A. Applicants are Entitled to Intervene as a Matter of Right

Courts must grant intervention where an applicant: (1) files a timely application; (2) claims an interest relating to the subject of the action; (3) is so situated that the disposition of the action may impair or impede their ability to protect that interest; and (4) demonstrates that an existing party does not adequately represent their interest. (See Cal. Civ. Proc. Code § 387(d)(1)(B); *Citizens for Balanced Use v. Mont. Wilderness Ass’n* (9th Cir. 2011) 647 F.3d 893, 897.)¹ Applicants have established each of these requirements.

¹ Intervention as-of-right under California Code of Civil Procedure section 387 “is in substance an exact counterpart to rule 24(a) of the Federal Rules of Civil Procedure.” (*Edwards v. Heartland Payment Sys., Inc.* (2018) 29 Cal.App.5th 725, 732, review denied, quoting *Hodge v. Kirkpatrick Dev., Inc.* (2005) 130 Cal.App.4th 540, 556.) Therefore, section 387 is “to be interpreted consistently with federal cases interpreting rule 24(a)(2).” (*Hodge, supra*, 130 Cal.App.4th at 556.)

1 **1. Applicants’ Motion is Timely.**

2 Timeliness is construed “broadly in favor of the [applicant] seeking intervention.” (*Silver v.*
3 *Babbitt* (D. Ariz.1994) 166 F.R.D. 418, 424; see also *United States v. Oregon* (9th Cir.1984) 745 F.2d
4 550, 552.) “[T]he mere lapse of time, without more, is not necessarily a bar to intervention.” (*United*
5 *States v. Alisal Water Corp.* (9th Cir.2004) 370 F.3d 915, 921; *United States v. Oregon*, 745 F.2d at 552.)
6 A motion is timely when “made at an early stage of the proceedings, the parties would not [suffer]
7 prejudice from the grant of intervention . . . and intervention would not cause disruption or delay in the
8 proceedings.” (*Citizens for Balanced Use, supra*, 647 F.3d at 897.)² Here, the case is still at an early stage
9 and Applicants’ intervention will not delay or disrupt the proceedings. There have been no substantive
10 proceedings in this action. There have been three trial setting conferences. The case is currently set for
11 trial on June 2, 2022, and Applicants understand the opening brief is not due to be filed until
12 approximately April 1, 2022, and opposition briefs would not be due until approximately May 3, 2022.

13 **2. Applicants Have Significant Interest Relating to the Subject Matter of the Action.**

14 When filing a motion to intervene, the applicant must demonstrate “an interest relating to
15 the . . . subject of the action.” (Cal. Civ. Proc. Code § 387(d)(1)(B).) To meet the interest requirement
16 for intervention as-of-right, applicants need only demonstrate “a significantly protectable interest.” (*Siena*
17 *Court Homeowners Ass’n v. Green Valley Corp.* (2008) 164 Cal.App.4th 1416, 1424 (internal quotation
18 omitted) (citing *Donaldson v. United States* (1971) 400 U.S. 517, 531, superseded by statute on other
19 grounds).) An applicant establishes a “significantly protectable interest” for purposes of intervention
20 when its interest “is protectable under some law and that there is a relationship between the legally
21 protected interest and the [plaintiff’s] claims.” (*Citizens for Balanced Use, supra*, 647 F.3d at 897.) “The
22

23 ² Compare *League of United Latin Am. Citizens v. Wilson* (9th Cir. 1997) 131 F.3d 1297, 1303
24 (finding motion to intervene untimely when filed after the court issued a temporary restraining order
25 and preliminary injunction, the court certified the class action, a motion to dismiss was filed,
26 discovery proceeded for nine months, and the court heard arguments for a motion for summary
27 judgment) with *Utah Ass’n of Ctys. v. Clinton* (10th Cir. 2001) 255 F.3d 1246, 1250–51 (finding
28 environmental interest groups’ motion to intervene timely when filed two and a half years after
commencement of action because “all that had occurred prior to the motion to intervene were document
discovery, discovery disputes, and motions by defendants seeking dismissal on jurisdictional grounds,”
and proposed intervenors promised not to seek additional discovery, file a counterclaim, or raise
additional defenses).

1 ‘interest’ test is not a clear-cut or bright-line rule, because no specific legal or equitable interest need be
2 established.” (*In re Estate of Ferdinand E. Marcos Human Rights Litig.* (9th Cir. 2008) 536 F.3d 980,
3 984 (quoting *S. Cal. Edison Co. v. Lynch* (9th Cir. 2002) 307 F.3d 794, 803)).

4 Courts consistently grant intervention as-of-right to applicants seeking to intervene in actions
5 challenging agency decisions, or actions that the applicants supported for environmental reasons. (See,
6 e.g., *Am. Farm Bureau Fed’n v. U.S. E.P.A.* (M.D. Pa. 2011) 278 F.R.D. 98, 106; *Cal. Dump Truck*
7 *Owners Ass’n v. Nichols* (E.D. Cal. 2011) 275 F.R.D. 303, 305–06.) In *Am. Farm Bureau Fed’n*, for
8 example, the court found that environmental organizations had sufficient interests to intervene in an
9 action challenging a government agency’s water pollution budget when the organizations were “involved
10 in several stakeholder meetings with the [agency] during the development of the [budget]” and submitted
11 comments during the budget drafting process. (278 F.R.D. at 106.) Similarly, in *Cal. Dump Truck*, the
12 court granted intervention as-of-right to an environmental organization that had an interest “in upholding
13 [challenged] regulations the adoption of which [it] actively advocated” for by providing comments,
14 participating in public workshops, and testifying before the agency to urge adoption. (275 F.R.D. at 305–
15 06; see also e.g., *Sagebrush Rebellion, Inc. v. Watt* (9th Cir. 1983) 713 F.2d 525, 526–28 [concluding that
16 environmental organization was entitled to intervene in an action challenging a government agency’s
17 order that established a conservation area for birds of prey when organization participated in
18 administrative process to advocate for establishment of the conservation area]; *Coal. of Ariz./N. M. Ctys.*
19 *for Stable Econ. Growth v. Dep’t of the Interior* (10th Cir. 1996) 100 F.3d 837, 841 [granting intervention
20 to an individual “wildlife photographer, amateur biologist, and a naturalist” who submitted a petition to
21 protect the spotted owl and sought to defend against a challenge to the owl’s protection]; *Idaho Farm*
22 *Bureau Fed’n v. Babbitt* (9th Cir. 1995) 58 F.3d 1392, 1397-98 [holding that conservation groups could
23 intervene in an action challenging an endangered species listing when they previously petitioned the Fish
24 and Wildlife Service to list that species as endangered]; *Utah Ass’n of Ctys., supra*, 255 F.3d at 1252; *In*
25 *re Sierra Club* (4th Cir. 1991) 945 F.2d 776, 779-81.)³ Here, Applicants seek to support the City’s
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27 ³ The Ninth Circuit has noted the “consistent approval of intervention of right on the side of the federal
28 defendant in cases asserting violations of environmental statutes.” (*Wilderness Soc’y v. U.S. Forest Serv.*
(9th Cir. 2011) 630 F.3d 1173, 1179.)

1 decision to deny approval of the Project and decline to certify an EIR and have thus established a
2 sufficient interest in the case consistent with the authorities cited above.

3 Moreover, Applicants have interests relating to the subject matter of the action, including (1) the
4 proper application and interpretation of CEQA in conjunction with other laws such as the Housing
5 Accountability Act and Housing Crisis Act; (2) ensuring the conservation and protection of wildlife and
6 plants, and reducing wildfire risk in the decision-making process for the Project and similar Projects⁴; and
7 (3) recreational, scientific, aesthetic, and conservation interests in the wildlife, plants, and habitats in and
8 adjacent to the Project area, including the Santa Monica Mountains. (See section (II) above; Reid-
9 Wainscoat Decl. ¶¶ 5-14; Goodwin Decl. ¶¶ 5-14; Jensen Decl. ¶¶ 5-9.) Applicants and Applicants’
10 members or staff regularly also visit areas of the Santa Monica Mountains for recreational purposes
11 including camping; identifying, observing, and studying plant and wildlife species; outdoor photography;
12 and hiking. (Reid-Wainscoat Decl. ¶¶ 5, 13-14 Jensen Decl. ¶ 8; Goodwin Decl. ¶ 7.)

13 Such recreational, scientific, aesthetic, or conservation interests related to the environment can
14 constitute protectable interests for intervention as-of-right. (See, e.g., *Citizens for Balanced Use*, supra,
15 647 F.3d at 897; *Am. Farm Bureau Fed’n*, supra, 278 F.R.D. at 106; *Coal. of Ariz./N. M. Ctys.*, supra,
16 100 F. 3d at 841. In *Citizens for Balanced Use*, for example, “applicants ha[d] a significant protectable
17 interest in conserving and enjoying the wilderness character of [a forest area].” (*Citizens for Balanced*
18 *Use*, supra, 647 F.3d at 897.) In *Am. Farm Bureau Fed’n*, environmental organizations were entitled to
19 intervene in an action challenging an agency’s water pollution budget as it applied to the Chesapeake Bay
20 (“Bay”) when the organizations claimed their members had economic, recreation, and aesthetic interests
21 in preventing pollution to the Bay, and “also claim[ed] that restoration and preservation of the Bay [was]
22 a core objective of their respective organizations.” (278 F.R.D. at 106.) Likewise, in *Coal of Ariz./N.M.*
23 *Ctys.*, an individual “wildlife photographer, amateur biologist, and a naturalist” with recreational and
24 conservation interests in the spotted owl he petitioned to protect, was permitted to intervene even though

25 ⁴ Applicants also have an interest in preventing physical harm that could result to their members from
26 wildfires caused by the Project if it is approved and built. (See Reid-Wainscoat Decl. ¶¶ 13-14 Jensen
27 Decl. ¶ 8; Goodwin Decl. ¶ 8.) Such an interest in preserving the safety of its members is a sufficient
28 interest for intervention. (See *People ex rel. Rominger v. Cty. of Trinity* (1983) 147 Cal.App.3d 655,
661–62 [permitting environmental group’s intervention to defend an ordinance that prevented pesticide
spraying because its members used lands that might be sprayed if the ordinance was invalidated].)

1 he had little economic interest in the owl. (100 F.3d at 841; see also *United States v. Carpenter* (9th
2 Cir.2008) 526 F.3d 1237, 1240 [finding conservation groups entitled to intervene when they had an
3 “interest in seeing that the wilderness area be preserved for the use and enjoyment of their members.”];
4 *Simpson Redwood, supra*, 196 Cal.App.3d at 1200 [granting permissive intervention to environmental
5 advocacy group after considering its interest in preserving the forest land at issue in the action].)

6 Applicants also demonstrated their interest in the subject matter of the action by participating in
7 the administrative process relating to the Project. The Center submitted detailed written comments to the
8 City on May 11, 2021 outlining how the Project and EIR did not adequately assess or mitigate impacts to
9 wildfire risk, mountain lions, wildlife connectivity, and special status species. (Reid-Wainscoat Decl. ¶
10 11.) Center staff also provided oral testimony at the City’s May 17, 2021 hearing. (*Id.*) CNPS submitted
11 detailed comments to the City on February 17, 2019, and at City meetings on April 15, 2021, April 21,
12 2021, May 12, 2021 on November 13, 2020. (Jensen Decl. ¶ 9.) Sierra Club members submitted
13 comments in May 2021, and provided testimony at City meetings in April 2021. (Goodwin Decl. ¶ 11.)
14 In sum, Applicants have established that they possess multiple interests related to the subject matter of
15 the Action qualifying them for intervention as-of-right.⁵

16 **3. The Disposition of this Litigation May Impair or Impede Applicants’ Interests.**

17 To show impairment of its interest, an applicant need only demonstrate that “the disposition
18 of the action may impair or impede [the applicant]’s ability to protect that interest.” (Cal. Civ. Proc.
19 Code § 387(d)(1)(B).) In *Idaho Farm*, for example, an action may have impaired an environmental
20 organization’s interests in preserving an endangered species listing if the action overturned that listing.
21 (See 58 F.3d at 1398.) In *Sagebrush Rebellion*, the court found that an environmental organization’s

22 ⁵ Although subsection (B) of the Argument section of this Memorandum discusses cases concerning
23 permissive intervention, section 387 requires an “interest” for both permissive intervention and
24 intervention as-of-right. (Cal. Civ. Code P. § 387(d)(1)(B), (d)(2).) After the Legislature adopted section
25 387 as an exact counterpart to rule 24 of the Federal Rules of Civil Procedure, many California courts
26 began demanding a lower threshold to establish an “interest” for intervention as-of-right in comparison
27 to the “interest” requirement for permissive intervention. (*Compare Edwards, supra*, 29 Cal.App.5th at
28 732 [requiring only an “interest relat[ed] to . . . the subject of the action” for intervention as-of-right],
Marken v. Santa Monica-Malibu Unified Sch. Dist. (2012) 202 Cal.App.4th 1250, 1269 [requiring as-of-
right applicants merely be “someone who claims an interest in an action”], *with Edwards, supra*, 29
Cal.App.5th at 736 [requiring “a direct and immediate interest” for permissive intervention], *Marken*,
supra, 202 Cal.App.4th at 1270 [requiring a “direct interest” for permissive intervention].)

1 “interest in the preservation of birds and their habitats” may have been impaired if an adverse judgment
2 invalidated establishment of conservation area. (713 F.2d at 528.) Here, a judgment invalidating the
3 City’s decisions could increase the risk of wildfire and result in loss of wildlife, native plants, and
4 habitats, potentially impairing Applicants’ and their members’ recreational, scientific, aesthetic, and
5 conservation interests. (Reid-Wainscoat Decl. ¶ 14; Jensen Decl. ¶¶ 8-9; Goodwin Decl. ¶¶ 11-13.) Such
6 a judgment would also undermine their interests in the proper enforcement and implementation of CEQA
7 as it relates to other state laws like the Housing Accountability Act and Housing Crisis Act. (Reid-
8 Wainscoat Decl. ¶ 14; Jensen Decl. ¶¶ 8-9; Goodwin Decl. ¶¶ 11-13.)

9 Further, a defendant-intervenor’s interest may be impaired even if a judgment in a plaintiff’s
10 favor returns an issue to the administrative decision-making process in which defendant-intervenor
11 can participate. (See *WildEarth Guardians v. Nat’l Park Serv.* (10th Cir.2010) 604 F.3d 1192, 1199.)
12 *Utah Ass’n of Cty’s.* also is instructive. In that case, conservation groups and other stakeholders sought to
13 intervene to defend the Clinton Administration’s decision to designate Grand Staircase Escalante
14 National Monument against a challenge by the Utah Association of Counties (“Counties”). (255 F.3d at
15 1248.) The Counties argued that the intervenors should not be allowed to intervene because even if the
16 monument management plan were set aside as a result of the litigation, there would be other
17 opportunities for the intervenors to protect their interests during future administrative processes. (*Id.* at
18 1253.) The Tenth Circuit disagreed with the Counties and concluded that the intervenors would be
19 prejudiced if they were barred from participating in the present action even if there may eventually be
20 alternative forums to assert their interests. (*Id.* at 1253-54.) Applied here, even if invalidating the City’s
21 decisions would initiate a new process in which defendant-intervenor could participate, their interests
22 may still be impaired.

23 **4. No Party in this Action Adequately Represents Applicants’ Interests.**

24 An applicant only has a “minimal” burden of showing inadequate representation. (*Forest*
25 *Conservation Council v. U.S. Forest Serv.* (9th Cir.1995) 66 F.3d 1489, 1498, abrogated on other
26 grounds by *Wilderness Soc’y v. U.S. Forest Serv.* (9th Cir. 2011) 630 F.3d 1173; see also *Trbovich v.*
27 *United Mine Workers of Am.* (1972) 404 U.S. 528, 538 n.10.) Applicants need only show that
28

1 representation may be inadequate. (*Forest Conservation Council, supra*, 66 F.3d at 1498.) Government
2 agencies do not adequately represent an applicant’s interests when the applicant has narrow, specific, or
3 personal interests because those agencies are “constrained” to representing broad public
4 interests. (*Conservation Law Found. of New Eng., Inc. v. Mosbacher* (1st Cir.1992) 966 F.2d 39, 44; see
5 *Forest Conservation Council, supra*, 66 F.3d at 1499; *United States v. City of Los Angeles* (9th Cir. 2002)
6 288 F.3d 391, 402; *Am. Farm Bureau Fed’n, supra*, 278 F.R.D. at 110–11 [finding government agency
7 did not adequately represent environmental organization groups “with regional and local interests,
8 including aesthetic, economic, educational, recreational, and resource interests” where agency “must
9 consider not only the interests of the public interests groups, but also the possibly conflicting interests
10 from agriculture, municipal stormwater associations, and land developers.”]; see also *Cal. Dump Truck,*
11 *supra*, 275 F.R.D. at 308 [finding that the California Air Resources Board did not adequately represent an
12 environmental interest group’s interests despite “shar[ing] the same ‘ultimate objective,’ namely
13 defending the regulation against [p]laintiff’s [challenges]” because the Board had to balance competing
14 interests of various constituencies, including the plaintiff’s].)

15 Here, the City must balance the competing interests of different constituencies, including
16 Plaintiff’s business and commercial interests in promoting land development. The City may not,
17 therefore, adequately represent the Applicants’ narrow and more specific interests in wildlife and plant
18 conservation and the robust enforcement and interpretation of CEQA to protect the environment. (Reid-
19 Wainscoat Decl. ¶¶ 9, 10, 11, 14; Goodwin Decl. ¶¶ 6, 9, 13; Jensen Decl. ¶¶ 7, 8, 9.)

20 **B. Applicants Meet the Requirements for Permissive Intervention.**

21 In addition to meeting the requirements for intervention as-of-right, Applicants meet the
22 requirements for permissive intervention. Courts grant permissive intervention: (1) upon timely
23 motion, when “[2]) the party has a direct and immediate interest in the action; [(3)] the intervention
24 will not enlarge the issues in the litigation; and [(4)] the reasons for the intervention outweigh any
25 opposition by the parties presently in the action.” (*U.S. Ecology, Inc. v. State* (2001) 92 Cal.App.4th 113,
26 139; see Cal. Civ. Proc. Code § 387(d)(2).)

1 As noted previously, Applicants have timely submitted this application and will not delay or
2 disrupt the proceedings. (*Sanders v. Pac. Gas & Elec. Co.* (1975) 53 Cal.App.3d 661, 668; *Citizens*
3 *for Balanced Use, supra*, 647 F.3d at 897.) There have been no substantive proceedings in this action.
4 There have been three trial setting conferences. The case is currently set for trial on June 4, 2022, and
5 Applicants understand the opening brief is not due to be filed until approximately April 5, 2022, and
6 opposition briefs would not be due until approximately May 5, 2022. Applicants do not anticipate
7 presenting any new legal or factual issues.

8 As discussed above, Applicants have demonstrated their interests or their members' interests in
9 conservation, recreational, scientific, and aesthetic interests in the area near the Project site, including the
10 Santa Monica Mountains. Courts often grant permissive intervention to nonprofit organizations seeking
11 to defend challenges to government agency decisions when a judgment might harm the organization's
12 interests or its members' interests. (See, e.g., *U.S. Ecology, supra*, 92 Cal.App.4th at 139; *Simpson*
13 *Redwood, supra*, 196 Cal. App. 3d at 1200-01 [permitting environmental *organization* to intervene when
14 it had an interest in conserving a redwood forest area; it played an instrumental role in establishing the
15 conservation area; and a judgment could harm its reputation and integrity as a conservation organization];
16 *Rominger, supra*, 147 Cal.App.3d at 661-62 [permitting intervention to environmental organization to
17 defend ordinance].)

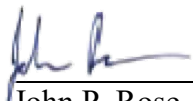
18 Finally, Applicants will not enlarge the issues in the litigation to matters not raised by the
19 original parties. (See *Simpson Redwood, supra*, 196 Cal.App.3d at 1202-03 [permitting intervention even
20 when intervenor would raise a new legal issue].) Applicants seek to intervene primarily to defend the
21 City's decisions under CEQA, the Housing Accountability Act, and Housing Crisis Act to deny approval
22 of the Project and decline to certify the EIR. Applicants' knowledge, background, and expertise regarding
23 wildlife and plant conservation, wildfire, CEQA, and land use planning will serve to inform the
24 adjudication of Plaintiff's and BIASC's causes of action. (See Reid-Wainscoat Decl. ¶¶ 5-14; Goodwin
25 Decl. ¶¶ 5-14; Jensen Decl. ¶¶ 5-9.) Intervention will not prejudice the parties but will allow Applicants
26 to defend their interests and their members' interests. (See, e.g., *Noya v. A.W. Coulter Trucking* (2006)
27 143 Cal.App.4th 838, 843; *Truck Ins. Exch. v. Super. Ct.* (1997) 60 Cal.App.4th 342, 349.)

1 **IV. CONCLUSION**

2 Applicants satisfy the requirements for both intervention as-of-right pursuant to California
3 Code of Civil Procedure section 387(d)(1)(B), and alternatively, permissive intervention pursuant to
4 section 387(d)(2). Applicants' Motion is timely because it is filed before any substantive proceedings
5 have taken place, and Applicants' intervention will not cause delay or prejudice. Applicants have
6 demonstrated: sufficient interests relating to the subject matter of the action, including (1) the proper
7 application and interpretation of CEQA in conjunction with other laws such as the Housing
8 Accountability Act and Housing Crisis Act; (2) ensuring the conservation and protection of wildlife and
9 plants, and reducing wildfire risk in the decision-making process for the Project and similar Project; and
10 (3) recreational, scientific, aesthetic, and conservation interests in the wildlife, plants, and habitats in and
11 adjacent to the Project area, including the Santa Monica Mountains. Moreover, Applicants have
12 demonstrated that a judgment invalidating the City's decisions may impair Applicants' and their
13 members' interests; and that no existing party adequately represents their specific interests. Accordingly,
14 Applicants respectfully request that the Court grant them leave to intervene as Respondents and
15 Defendants in this action.

16
17 DATED: November 24, 2021

CENTER FOR BIOLOGICAL DIVERSITY

18
19 By: 
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21 Aruna Prabhala
22 John Buse

23 Attorneys for Applicant Intervenors CENTER FOR
24 BIOLOGICAL DIVERSITY, SIERRA CLUB, and
25 CALIFORNIA NATIVE PLANT SOCIETY
26
27
28