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Court of Appeal, First Appellate District
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No. A172005

**IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT,
DIVISION THREE**

1000 FRIENDS PROTECTING HISTORIC BENICIA,

Petitioner-Appellant,

v.

CITY OF BENICIA,

Defendant-Respondent,

and

KEITH ROGAL AND ROGAL & ASSOCIATES,
GINA COOPER AND ORCHARD CROSSING,
ROBERT WHITEHEAD AND RICHARD BORTOLAZZO,

Real Parties in Interest and Respondents.

On Appeal from the Superior Court for the County of Solano
Hon. Christine A. Carringer
Case No. FCS059252

APPLICATION FOR LEAVE TO FILE BRIEF OF *AMICI CURIAE* CALIFORNIANS FOR HOMEOWNERSHIP AND YIMBY LAW IN SUPPORT OF RESPONDENTS

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CERTIFICATE OF INTERESTED PERSONS

This is the initial certificate of interested entities or persons under California Rules of Court, Rule 8.208, submitted on behalf of Californians for Homeownership and YIMBY Law as *Amici Curiae*. The undersigned certifies that California Association of Realtors has the right to appoint the directors of Californians for Homeownership. The undersigned knows of no other interested entities or persons that must be listed in the Certificate.

DATE: October 13, 2025

Respectfully submitted,

By: */s/ Kevin Poloncarz*
Kevin Poloncarz

Counsel for Amici Curiae

APPLICATION FOR PERMISSION TO FILE *AMICUS CURIAE* BRIEF

Californians for Homeownership and YIMBY Law (collectively, "*Amici Curiae*" or "*Amici*") apply for permission to file the attached *amicus curiae* brief in support of Respondents City of Benicia and Real Parties in Interest. This brief is timely filed within fourteen days of September 29, 2025, the date Appellant filed its reply brief.

INTEREST OF AMICI

Californians for Homeownership ("CFH") was founded in 2018 in response to the Legislature's call for increased private nonprofit enforcement of California's housing laws. (See Gov. Code, § 65589.5, subd. (k) [formalizing standing for "housing organizations" under the Housing Accountability Act].) It is a 501(c)(3) non-profit charity formed to address California's housing crisis by using legal tools to support the production and availability of housing affordable to families at all income levels. To advance this mission, its primary activity is litigation against cities that engage in exclusionary or obstructive zoning and land use practices, including under the HAA. It was founded by the California Association of Realtors, from which it receives operational and financial support.

CFH's work gives a voice to those in need of housing—a voice that is systematically ignored in California's system for making land use decisions. Housing needs are a statewide concern, but land use authority in California is distributed among over 500 local jurisdictions. The result is the creation of

significant local barriers to new housing construction, even in the face of ever-increasing regional housing needs. Although landowners and developers can play a role in representing the interests of future residents, they are not particularly well-suited to the task. The primary interest of owners of development property is usually to advance the most economically productive use of their property. It is critical, then, that organizations like CFH fill the gap by representing the public interest in the development of additional housing.

YIMBY Law is the legal arm of the pro-housing movement and is housed in Yes In My Back Yard, YIMBY Action's 501(c)(3) affiliate. YIMBY Law is 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.

YIMBY Law enforces state laws such as Housing Element law and the Housing Accountability Act by advising agencies of their obligations under state law, and filing lawsuits against those agencies when they fail to comply. For example, YIMBY Law brought a successful suit against the City of Simi Valley for violating the Housing Accountability Act by failing to approve a senior housing project. In addition to its litigation work, YIMBY Law organized the Campaign for Fair Housing Elements, a

collaborative effort by housing advocates around the state to monitor and ensure cities' compliance with their Regional Housing Needs Assessment obligations.

Amici Curiae have significant expertise in the array of housing laws that the California Legislature has strengthened over the last decade. Drawing on that expertise to further their mission of improving affordability, *Amici* regularly file lawsuits against localities to enforce state housing laws. *Amici* also file *amicus* briefs in appellate and trial courts to provide courts with insight into the proper interpretation of housing laws. Decisions in these cases have spurred the approval of thousands of much-needed homes. *See, e.g.*, *Californians for Homeownership, Inc. v. City of Beverly Hills*, (L.A. Super. Ct. Dec. 21, 2023, No. 23STCP00143); *Californians for Homeownership, Inc. v. City of La Canada Flintridge*, (L.A. Super. Ct. Sept. 5, 2023, No. 23STCP00699); *Yes In My Back Yard v. City of Culver City* (2023) 96 Cal.App.5th 1103; *Yes in My Back Yard v. City of Los Angeles*, (L.A. Super. Ct. July 29, 2022, No. 21STCP03883).

THE *AMICUS CURIAE* BRIEF WILL ASSIST THIS COURT IN DECIDING THIS MATTER

Amici Curiae respectfully seek to assist this Court in rendering a decision here to ensure the correct interpretation of Senate Bill ("SB") 35. As noted, *Amici Curiae* have extensive expertise in litigating California's housing laws. CFH filed an amicus brief in the landmark case from this Court interpreting SB 35. *See Ruegg & Ellsworth et al. v. City of Berkeley* (2021) 63 Cal.App.5th 277. *Amici*'s brief in this case will explain why the Legislature enacted SB 35, how its complex provisions work, and

how the Legislature has used the same legal tool in other housing laws. It will also explain the problematic consequences that would flow from Appellant's arguments, which could undermine the Legislature's streamlining of much-needed housing to address our state's affordability crisis.

RULE 8.200(C)(3) DISCLOSURE

Consistent with California Rule of Court 8.200(c)(3), *Amici* state that no party or any counsel for any party authored this amicus brief in whole or in part, or made a monetary contribution intended to fund the preparation or submission of this brief. No other person or entity made a monetary contribution to fund the preparation or submission of the brief other than the *amici* and their counsel.

CONCLUSION

Californians for Homeownership and YIMBY Law respectfully ask this Court to grant this application and file the accompanying *amicus curiae* brief.

DATE: October 13, 2025

Respectfully submitted,

By: */s/ Kevin Poloncarz*

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INTRODUCTION

California suffers from a shortage of nearly three million homes. For decades, localities have failed to plan for and approve housing adequate to meet the state's needs. Anti-housing activists have wielded the California Environmental Quality Act ("CEQA") to obstruct or delay housing developments.

In 2017, the California Legislature passed Senate Bill ("SB") 35, which designed a streamlined approval process for certain housing developments. The Legislature provided that no development application under SB 35 is subject to CEQA. SB 35 has streamlined the approval of tens of thousands of homes for California residents, and the Legislature has expanded upon it and used the same approach in other housing laws.

In 2022, the City of Benicia met its obligations under SB 35 and swiftly approved the two developments at issue in this case—including 138 new homes—with no CEQA process. Appellant argues that the developments fall into an exception to SB 35 or that CEQA applies even when all SB 35 requirements are met. These arguments lack merit and could threaten the entire structure of the Legislature's housing streamlining laws.

This Court should affirm the judgment below so that, three years after these projects were approved, they can finally provide homes for the Californians who need them.

ARGUMENT

I. California's housing crisis stems in part from localities' failure to approve enough housing and onerous CEQA review.

Our state's housing crisis largely stems from localities' failure to approve enough housing. CEQA poses another significant obstacle, as anti-housing activists weaponize it against housing developers. Only recently has the Legislature begun to address these problems effectively.

A. Localities have failed to approve enough new housing, and state law has provided little remedy.

"California has a housing supply and affordability crisis of historic proportions." (Gov. Code, § 65589.5, subd. (a)(2)(A).)[1] In 2015, the Legislative Analyst's Office ("LAO") found that home prices had risen to two-and-a-half times the national average.[2] LAO estimated that California would have needed to build 2.7 million more homes from 1980 to 2010 to keep housing cost inflation in check.[3]

Each locality has long been required to adopt a comprehensive, long-term general plan, including a "housing element" to address housing needs. (*California Building Industry Assn. v. City of San Jose* (2015) 61 Cal.4th 435, 444.) In

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[1] All further statutory references are to the Government Code unless otherwise indicated.

[2] Legis. Analyst's Off., California's High Housing Costs: Causes and Consequences (2015), at p. 7, <https://lao.ca.gov/reports/2015/finance/housing-costs/housing-costs.pdf>.

[3] *Id.* at p. 21.

1980, the Legislature added a "separate, comprehensive statutory scheme" to strengthen this requirement. (*Id.* at p. 445.) Under this scheme, state and regional authorities determine housing needs and notify each locality of its regional housing needs allocation. (*Martinez v. City of Clovis* (2023) 90 Cal.App.5th 193, 223; see § 65580 et seq.) Each locality adopts and submits its housing element for state approval. (*California Building Industry Assn.*, *supra*, 61 Cal.4th at p. 445.)

On paper, state law has also required localities to follow through on their plans to approve housing. The Housing Accountability Act of 1982 ("HAA") limited a locality's discretion to disapprove or reduce the density of certain proposed housing projects that complied with applicable general plan, zoning, and development policies unless it could show that a project "would have a specific, adverse, and unavoidable impact on public health or safety." (*California Renters Legal Advocacy & Education Fund v. City of San Mateo* (2021) 68 Cal.App.5th 820, 835; see § 65589.5.)

But localities still have not approved enough housing. Their housing elements were ineffective, and courts rarely provided a meaningful check. (See, e.g., *Fonseca v. City of Gilroy* (2007) 148 Cal.App.4th 1174, 1185 [upholding a locality's housing element without analyzing its "merits"].) And even when localities *did* plan for new housing, courts often rubberstamped their housing disapprovals. (See, e.g., *Mira Development Corp. v. City of San Diego* (1988) 205 Cal.App.3d 1201, 1223 [upholding a locality's housing disapproval because, among other reasons, it

was motivated by concerns about school crowding and "the lack of park space"].) Without effective state laws requiring more housing, the shortage became increasingly severe.

In 2017, the Legislature took action. In addition to enacting SB 35, it strengthened existing housing laws. (See *California Renters, supra*, 68 Cal.App.5th at p. 836.) For example, amendments to the HAA clarified that localities could not disapprove qualifying housing developments based on non-"objective" standards and that localities would not receive deference in interpreting and applying their standards. (*Ibid.*) Exclusionary localities and anti-housing activists increasingly attempted to delay or block new developments using a less "objective" tool: environmental review under CEQA.

B. CEQA is a significant obstacle to new housing.

A locality generally must prepare an environmental impact report ("EIR") when it approves a "discretionary project" and there is a "fair argument" that the project may have a "significant effect" on the environment. (Pub. Res. Code. §§ 21080, subd. (a), 21151, subd. (a); see *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75.) Multifamily housing applications are typically discretionary because they are subject to local design review or require a conditional use permit. But local planning and CEQA review are costly and onerous. A 2021 study of housing project entitlements found that the median project in San Francisco took twenty-seven months to entitle, with the top quartile taking thirty-eight months or more.[4]

[4] O'Neill et al., Examining Entitlement in California to Inform
(continued . . .)

Even after a development is approved, housing developers risk further expense and delay from CEQA litigation. Anti-housing activists have become experts at weaponizing CEQA. CEQA lawsuits against housing projects often have "nothing to do with environmental protection and everything to do with [ ] privacy and aesthetic design concerns." (*Jenkins v. Brandt-Hawley* (2022) 86 Cal.App.5th 1357, 1388.) As this Court has noted, "CEQA was meant to serve noble purposes, but it can be manipulated to be a formidable tool of obstruction, particularly against proposed projects that will increase housing density." (*Tiburon Open Space Committee v. County of Marin* (2022) 78 Cal.App.5th 700, 782.)

The data bears this out. One study found that 21% of *all* CEQA lawsuits in 2010–12 challenged housing projects, rising to 25% in 2013–15, and that the vast majority of these lawsuits were filed against infill projects in existing developed areas. (Hernandez, California's Environmental Quality Act Lawsuits and California's Housing Crisis (2018) 24 Hastings Envtl. L.J. 21, 28, 29.) Abuse of CEQA to fight housing appears to have become even more common since the Legislature began strengthening its housing laws. In 2020 alone, CEQA lawsuits were filed to block nearly 48,000 approved housing units, the equivalent of just under half of California's total annual housing production. (Hernandez, In the Name of the Environment Part III: CEQA, Housing, and the Rule of Law (2022) 26 Chapman L.Rev. 57, 65.)

Policy and Process: Advancing Social Equity in Housing Development Patterns 97 (2021).

Even if courts ultimately reject the CEQA claims, they delay housing for years, raise the cost of homebuilding, and deter developers.[5]

II. The Legislature designed SB 35 to ensure that housing developments avoid local planning and CEQA review.

As noted, in 2017, the Legislature began to address the housing crisis in earnest. It codified findings that "California has a housing supply and affordability crisis of historic proportions," and that "the absence of meaningful and effective policy reforms to significantly enhance the approval and supply of housing affordable to Californians of all income levels is a key factor." (§ 65589.5, subd. (a)(2)(A), (B).) It set to work designing new and more effective policy reforms, of which one of the most important is the housing streamlining regime in SB 35. (See Stats. 2017, ch. 366.)

A. SB 35 requires "streamlined, ministerial" approval for certain housing developments.

SB 35 provides for streamlined approval of certain housing developments in any locality that has not issued sufficient permits to meet its regional housing needs allocation. Approval turns on whether a development meets a checklist of "objective planning standards." (§ 65913.4, subd. (a)(1)–(9).) The locality *must* find that the development meets these objective planning

[5] If anything, reported information likely understates the extent to which CEQA impedes housing. For example, the data does not reveal hidden costs such as payoffs made to avoid litigation, proposed projects that are withdrawn, or projects that are never proposed at all because of the high costs of CEQA compliance, delay, and litigation risk.

standards "if there is substantial evidence that would allow a reasonable person to conclude that the development is consistent" with them. (*Id.*, subd. (c)(3)). If an application meets these conditions, the locality "shall approve" the development, and that approval is "ministerial." (*Id.*, subd. (d)(1).) A "ministerial" act is one "that a public officer is required to perform in a prescribed manner in obedience to the mandate of legal authority and without regard to his own judgment or opinion concerning such act's propriety or impropriety, when a given state of facts exists." (*Ruegg & Ellsworth v. City of Berkeley* (2021) 63 Cal.App.5th 277, 299–300 [citation omitted].)

The Legislature included shot clocks by which the locality must determine compliance with the objective standards and issue its approval. For developments of 150 or fewer units—like those at issue here—the locality must determine compliance with the objective planning standards, and notify the applicant of any conflicts, within 60 days of application submittal and 30 days of application resubmittal. (§ 65913.4, subd. (c)(1)(A), (c)(1)(C).) If the locality does not provide the applicant with the required documentation, the development is "deemed to satisfy" the objective planning standards. (*Id.*, subd. (c)(2).) Although the locality may conduct design review pursuant to existing objective standards, it "shall approve" a development of 150 of fewer units within 90 days of application submittal. (*Id.*, subd. (d)(1).)

B. SB 35 provides for only narrow exceptions.

Some of the "objective planning standards" function as narrow exceptions to the law. In this way, the Legislature made the policy decision to limit SB 35's application in certain

especially sensitive places. For example, SB 35's streamlined process does not apply to a project that is within an area of the coastal zone vulnerable to five feet of sea level rise (as determined by specified agencies), a wetland, a very high fire hazard severity zone without fire hazard mitigation measures, a listed hazardous waste site, or a habitat for protected species. (§ 65913.4, subd. (a)(6)(A)(iii), (C), (D), (E), (J).) It also does not apply if the project would "require the demolition of a historic structure that was placed on a national, state, or local historic register." (*Id.*, subd. (a)(7)(C).)

But these exceptions are "limited" and are construed narrowly in light of SB 35's purpose of "expedit[ing] approval of affordable housing developments." (*Ruegg & Ellsworth, supra*, 63 Cal.App.5th at pp. 303–04.) As noted above, localities ask only whether evidence exists to allow a "reasonable person" to conclude that the proposal is "consistent" with all "objective planning standards" (i.e., that it *does not* meet any of the exceptions). (§ 65913.4, subd. (c)(3).) Could a reasonable person find that the project *doesn't* meet any of the exceptions? If the answer is yes, then the development must be approved under SB 35.[6] If the answer is no, then the housing development must

[6] In this way, the "reasonable person" standard puts a thumb on the scale against the exceptions. If evidence is ambiguous such that a reasonable person could conclude either that the proposed project is on a wetland or that it is not on a wetland, the locality must find that it is *not* on a wetland. This ensures that the exceptions remain narrow.

undergo the locality's ordinary approval process—including, in most cases, environmental review under CEQA.

C. CEQA does not apply to any determination under SB 35.

CEQA never otherwise applies. In SB 35, the Legislature provided that a locality's determination of whether a development meets the SB 35 requirements is not subject to CEQA. Subdivision (o) provides that "[t]he determination of whether an application for a development is subject to the streamlined ministerial approval process provided by subdivision (c) is not a 'project' as defined in Section 21065 of the Public Resources Code." (Gov. Code, § 65913.4, subd. (o).) CEQA can only ever apply to a "project." (See Pub. Res. Code, § 21080, subd. (a); Pub. Res. Code, § 21065 [defining "project" for purposes of CEQA].) There can be no application of CEQA where the Legislature has declared that the determination of whether a development application qualifies for SB 35's streamlined process is not a "project" in the first place. The Legislature could not have been any clearer in this respect.

This is consistent with SB 35's structure and intent. Tackling the state's housing crisis requires streamlining housing developments, not studying them. (Cf. § 65913.4, subd. (u) [providing that "this section [should] be interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, increased housing supply"].) As noted, applicability determinations are simple. For example, the locality asks: "Could a reasonable person conclude that the location of the proposed development is

not a wetland?" The Legislature provided that CEQA review is not needed to answer this question.

Of course, CEQA also has no application after the locality concludes that a development project is eligible for SB 35. SB 35 provides that the locality's approval process is "ministerial." (See § 65913.4, subd. (a).) CEQA does not apply to "[m]inisterial projects." (Pub. Res. Code, § 21080, subd. (b)(1); accord Cal. Code Regs., tit. 14, § 15268.) This too makes sense: CEQA requires governmental decisionmakers to inform themselves and the public about potential environmental effects, identify alternatives to reduce or avoid environmental damage, and disclose to the public the reasons why a project was approved. (See Cal. Code Regs., tit. 14, § 15002, subd. (a)(1)–(4).) Such information and analysis by a locality would be superfluous where—as in SB 35—the *Legislature* already made the approval decision for projects meeting the law's objective criteria.

D. The legislative history confirms that CEQA does not apply to SB 35.

Analyses by the Legislature during the passage of SB 35 confirm this interpretation. For example, a committee analysis on an early version of SB 35 noted that sidestepping CEQA was the point of the bill—and that this was precisely the problem opponents had with it. (See Assem. Com. on Local Gov., analysis of Sen. Bill No. 35 (2017–2018 Reg. Sess.), as amended June 20, 2017, at p. 10 ["Opponents of the bill note[ ] that the streamlining process contained in the bill will bypass environmental review, potentially leading to increases in air and water pollution, and

preventing people from having access to information about negative impacts to their health."].)

The year after SB 35, the Legislature passed SB 765, a clean up bill that enacted the text that is now in subdivision (o). (See Stats. 2018, ch. 840, § 2, subd. (k).) The final Senate Floor Analysis noted twice that SB 765 "provides that an application for an SB 35 development is not a 'project' as defined in CEQA and therefore shall not trigger a CEQA review," noting that this was "[i]n keeping with the streamlined, ministerial process established under SB 35." (Sen. Rules Com., Off. of Sen. Floor Analyses, 3d reading analysis of Sen. Bill No. 765 (2017–2018 Reg. Sess.) as amended Aug. 27, 2018, pp. 4, 6.) SB 765 also added the text providing that SB 35 must be "interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, increased housing supply." (See Stats. 2018, ch. 840, § 2, subd. (l).) If there were any doubt, SB 765 confirmed that CEQA has no place under SB 35.[7]

[7] Other recent bills confirm the Legislature's intent to reduce the applicability of CEQA to housing approvals, including AB 1633, which cracked down on a pattern of CEQA abuse, and AB 130, which limited CEQA's application generally. (See Stats. 2023, ch. 768 [providing that improper use of CEQA review to delay approval of housing is a "disapproval" for which the HAA provides a remedy]; Stats. 2025, ch. 22, § 59 [creating a new statutory exemption to CEQA for infill housing projects].)

III. The Legislature has built upon SB 35 and applied the same approach in other housing laws.

SB 35 has been a remarkably effective tool. In its first three years alone, it expedited over 18,000 new housing units across the state.[8] A study of entitlements in San Francisco over those three years found that the median timeframe for planning approval under SB 35 was 3.4 months, compared to a median timeframe for approval of more than 24 months for non-SB 35 projects.[9] Although more recent data is not readily available, SB 35 has likely grown even more effective over time.

In the eight years since SB 35 was enacted, the Legislature has enacted numerous laws to further clarify ambiguities, close loopholes, and expand SB 35's reach. (See Stats. 2018, ch. 840; Stats. 2019, ch. 663; Stats. 2020, ch. 194; Stats. 2021, ch. 160; Stats. 2022, ch. 658; Stats. 2022, ch. 659.) Most notably, in 2023, the Legislature passed SB 423, extending SB 35 another ten years to 2036 and expanding the law to more completely cover mixed-income housing developments. (See Stats. 2023, ch. 778.)[10]

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[8] Manji & Finnigan, Streamlining Multifamily Housing Production in California: Progress Implementing SB 35 (2023), p. 7, <https://ternercenter.berkeley.edu/wp-content/uploads/2023/08/Terner-Center-SB-35-Paper-August-2023-Final.pdf>.

[9] O'Neill et al., Examining Local Law, Policy, and Planning Practice on Development in San Francisco Using CALES (2023), p. 10, <https://www.hcd.ca.gov/sites/default/files/docs/policy-and-research/plan-report/ucb-examining-local-law-policy-planning-practice-on-development-in-sf-using-cales.pdf>.

[10] Originally, SB 35 was effective only until January 1, 2026. (Stats. 2017, ch. 366, § 3, subd. (j).)

The Legislature has also used the same streamlining approach on other types of housing developments. For example, in 2022, the Legislature passed AB 2011, which established a "streamlined, ministerial" approval process for affordable housing projects on commercially-zoned lands and mixed-income projects on commercial corridors that meet a checklist of "objective development standards." (See Stats. 2022, ch. 647; §§ 65912.113–65912.114 [projects on commercially-zoned lands]; 65912.123–65912.124 [projects on commercial corridors].) Like SB 35, AB 2011 requires localities to deem the development consistent with the objective standards if there is substantial evidence to allow a reasonable person to so conclude. (§§ 65912.114, subd. (c), 65912.124, subd. (c).) And, like SB 35, AB 2011 exempts all determinations from CEQA. (See §§ 65912.114, subd. (d), 65912.124, subd. (d) ["The determination of whether a proposed project submitted pursuant to this section is or is not in conflict with the objective planning standards is not a 'project' as defined in Section 21065 of the Public Resources Code."].)

IV. Appellant's arguments are mistaken and would thwart one of the Legislature's key tools to address the state's housing crisis.

Appellant's arguments are incorrect. First, because the Legislature provided that CEQA never applies to determinations under SB 35, there is no place for administrative review under CEQA. Second, Appellant's argument that "historic structure" can mean "historic district" conflicts with SB 35's text. Appellant's flawed arguments risk undermining the Legislature's laws and exacerbating the housing crisis.

A. The Legislature displaced administrative review under CEQA and provided for review only under SB 35.

Appellant mistakenly insists that CEQA requires SB 35 determinations to undergo administrative review by an elected decisionmaking body because a "nonelected decisionmaking body . . . determine[d] that a *project* [was] not subject to this division." (Appellant's Reply Brief ("ARB") 42 [quoting Pub. Res. Code, § 21151, subd. (c) [emphasis added]].)

The Legislature provided that a development submitted under SB 35's streamlined approval process is not a "project" under CEQA. "The determination of whether an application for a development is subject to the streamlined ministerial approval process provided by subdivision (c) is not a 'project' as defined in Section 21065 of the Public Resources Code." (See Gov. Code, § 65913.4, subd. (o).) It cannot be the case that CEQA's procedures for administrative review apply to a determination that the Legislature has declared does not constitute a "project" in the first instance. The *Legislature* itself made that determination when it enacted SB 35. Appellant argues that SB 35 does not "expressly supersede" section 21151 (ARB 42), but the Legislature could not have been more clear.[11]

Nor is CEQA review necessary to prevent a locality from making "a hasty ministerial decision" that "could have irretrievable consequences." (ARB 51.) In the first place, on the

[11] Appellant does not appear to dispute that, once it is determined that a project meets SB 35's requirements, approval is "uniformly ministerial" and CEQA does not apply. (ARB 47.)

front end, SB 35 permits design review by the locality's planning commission to ensure objective criteria are met. (Gov. Code, § 65913.4, subd. (d).) Although careful review by a locality may "require efficiency," it is hardly "impossible." (See ARB 48.)

Further, on the back end, SB 35 provides judicial review of a locality's ministerial approval under traditional mandamus. (Code Civ. Proc. § 1085; see Joint Opposition Brief 22–26.) A petitioner must show that the locality's determination that a reasonable person could conclude that the project met SB 35's requirements was "arbitrary, capricious or entirely lacking in evidentiary support, contrary to established public policy, unlawful or procedurally unfair." (*Helena F. v. West Contra Costa Unified School Dist.* (1996) 49 Cal.App.4th 1793, 1799.) This judicial review guards against arbitrary housing approvals that violate SB 35 and could have "irretrievable consequences." For example, a writ of mandate would lie if a reasonable person would *necessarily* find that the proposed development will require "demolition of a historic structure." (Gov. Code, § 65913.4, subd. (a)(7)(C).) But the same would not be true if a reasonable person could also conclude that it will not. This Court has stated that it is "untroubled" by application of the "reasonable person" standard to objective criteria. (*California Renters*, *supra*, 68 Cal.App.5th at p. 852 [noting that there is "no basis for concern that [it] would require project approval based solely on the unsupported opinion of a single person, or on evidence that a reasonable person would not find credible and persuasive"].)

But this standard of review is limited for a reason. "California has a housing supply and affordability crisis of historic proportions." (Gov. Code, § 65589.5, subd. (a)(2)(A).) As this Court has noted, California's housing laws are "strong medicine precisely because the Legislature has diagnosed a sick patient." (*California Renters*, *supra*, 68 Cal.App.5th at p. 854.)

B. The term "historic structure" in SB 35 cannot mean "historic district."

SB 35 provides that streamlining does not apply if a project would "require the demolition of a *historic structure* that was placed on a national, state, or local historic register." (Gov. Code, § 65913.4, subd. (a)(7)(C) [emphasis added].) Appellant contends that the phrase "historic structure" encompasses a "historic district[] consisting of multiple interrelated buildings and structures that functioned as an interconnected whole – including the pattern of organization that makes such district a recognizable unit." (ARB 10.)

But SB 35 expressly contemplates the streamlining of developments located within a "historic district." Subdivision (e)(1)(B) limits parking requirements for SB 35 developments in a "historic district." (See § 65913.4, subd. (e)(1)(B).) The Legislature understood that SB 35 streamlining may apply within historic districts, just as long as the development does not "require the demolition of a historic structure." By conflating "structure" and "district," Appellant's argument would render subdivision (e)(1)(B) meaningless. The "historic structure" exception in subdivision (a)(7)(C) has a narrower meaning. (See *Ruegg & Ellsworth, supra*, 63 Cal.App.5th at pp. 303–04

[emphasizing that exceptions must be interpreted in light of SB 35's purpose of streamlining housing].)

Appellant's argument would also frustrate the Legislature's intent by turning a narrow "objective" planning standard into a highly subjective one. Under Appellant's view, the exception would presumably involve subjective inquiries into (1) whether buildings "function[]" as an "interconnected whole" and create a "recognizable unit," and (2) whether a proposed development would somehow "demolish" that "unit." (See ARB 10.) But the legislative text provides for a simple "objective" standard: whether a "historic structure" would be "demolish[ed]."

Moreover, the Legislature knows how to provide an exception from ministerial review procedures for developments anywhere in a "historic district." In 2021, the Legislature passed SB 9, which provides for streamlined ministerial approval of housing developments of up to four units in single-family zones. (Stats. 2021, ch. 162.) One condition for that process is that the "development is not located *within a historic district* or property included on the State Historic Resources Inventory, as defined in Section 5020.1 of the Public Resources Code, or within a site that is designated or listed as a city or county landmark or historic property or district pursuant to a city or county ordinance." (Gov. Code, § 65852.21, subd. (a)(5).) Effect must be given to the Legislature's decision in SB 35 to provide a far narrower exception.[12]

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[12] "Historic district" exemptions from state housing law have led anti-housing activists and exclusionary localities to use

(continued . . .)

C. Appellant's arguments would undermine the Legislature's housing laws.

After four decades of ineffectual housing reforms that did not produce more housing (see *infra* I.A), the Legislature designed SB 35's streamlining approach. It is now one of the Legislature's key tools to address the state's housing crisis, and it is responsible for tens of thousands of homes that people are living in *today*. As the Legislature continues to expand this approach and apply it to other classes of housing developments, the state may see tens or hundreds of thousands more homes.

This litigation threatens this progress. As a practical matter, Appellant's arguments could gut the Legislature's streamlining regime. All determinations under SB 35 might trigger years of CEQA review and litigation.[13]

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historic designations to evade housing law. See Dineen, *'Historic' NIMBY Playbook Hits Bay Area, and Could Affect New Housing Throughout the Region*, S.F. Chronicle (Nov. 15, 2023), <https://www.sfchronicle.com/bayarea/article/housing-nimby-historic-baywood-18450990.php> (noting the efforts of a group of homeowners in one of San Mateo's wealthiest neighborhoods to designate their neighborhood as a historic district to be exempt from SB 9). The potential for this mischief underscores the importance of giving meaning to the Legislature's decision not to provide a "historic district" exemption in SB 35.

[13] If Appellant were correct that its position would not open the floodgates to these consequences because it would entail only a "limited administrative appeal" with no factfinding and that would not modify SB 35's strict deadlines (ARB at 48, 49), it is unlikely this hearing could provide any practical value. And it appears even less likely that such a hearing could have "avert[ed] [this] protracted litigation." (ARB 48.)

The developments at issue in this case will provide 138 homes for Californians. They, and those like them, cannot wait for years of CEQA litigation to conclude every time a SB 35 project is approved. That is not what SB 35 contemplates, and it is not what the Legislature intended.

CONCLUSION

Amici respectfully request that this Court affirm the Superior Court's denial of the writ of mandate.

DATE: October 13, 2025 Respectfully submitted,

COVINGTON & BURLING LLP

By: */s/ Kevin Poloncarz*
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CERTIFICATE OF COMPLIANCE

The foregoing Amicus Curiae Brief contains 4,494 words (including footnotes, but excluding the Application, tables, signature block, and this certificate). In preparing this certificate, I have relied on the word count generated by Microsoft Word for Microsoft 365. The Brief and Application also conform to the format requirements set forth in California Rule of Court 8.74 (as amended eff. Jan. 1, 2020).

DATE: October 13, 2025 Respectfully submitted,

COVINGTON & BURLING LLP

By: */s/ Kevin Poloncarz*
Kevin Poloncarz

PROOF OF SERVICE

No. A172005

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action. My business address is 1999 Avenue of the Stars, Suite 3500, Los Angeles, CA 90067. On October 13, 2025, I served the following document(s) described as:

APPLICATION FOR LEAVE TO FILE BRIEF OF *AMICI CURIAE* CALIFORNIANS FOR HOMEOWNERSHIP AND YIMBY LAW IN SUPPORT OF RESPONDENTS

[PROPOSED] BRIEF OF *AMICI CURIAE* CALIFORNIANS FOR HOMEOWNERSHIP AND YIMBY LAW IN SUPPORT OF RESPONDENTS

on the interested parties in this action as follows:

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[x] (BY TRUEFILING) By filing and serving the foregoing through Truefiling such that the document will be sent electronically to the eservice list on October 13, 2025; and

The Hon. Christine A. Carringer
Superior Court of California
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[x] (BY MAIL) By causing the document to be sealed in an envelope addressed to the recipient above, with postage thereon fully prepaid, and placed in the United States mail at 1999 Avenue of the Stars, Suite 3500, Los Angeles, CA 90067.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this proof of service is executed at 3:00 p.m. on October 13, 2025.

/s/ Denis Listengourt
Denis Listengourt