A170704

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT, DIVISION FOUR

COALITION OF PACIFICANS FOR AN UPDATED PLAN and KRISTIN CRAMER,
Plaintiffs and Respondents,

v.

CITY COUNCIL OF THE CITY OF PACIFICA and CITY OF PACIFICA,
Defendants and Appellants.

MONTEREY ROAD PACIFICA, LLC, JAVIER CHAVERRIA, and VISTAMAR DEVELOPMENT,
Real Parties in Interest and Appellants.

APPEAL FROM SAN MATEO COUNTY SUPERIOR COURT
NANCY L. FINEMAN, JUDGE • CASE NO. 20CIV05719

APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF AND AMICUS CURIAE BRIEF OF YIMBY LAW, BAY AREA COUNCIL, CALIFORNIA BUILDING INDUSTRY ASSOCIATION, CALIFORNIANS FOR HOMEOWNERSHIP, INC., CALIFORNIA HOUSING DEFENSE FUND, CALIFORNIA HOUSING PARTNERSHIP CORPORATION, HOUSING ACTION COALITION, AND SAN FRANCISCO BAY AREA PLANNING AND URBAN RESEARCH ASSOCIATION, IN SUPPORT OF APPELLANTS

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APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF

Under California Rules of Court, rule 8.200(c), YIMBY Law, the Bay Area Council, the California Building Industry Association, Californians For Homeownership, Inc., the California Housing Defense Fund, the California Housing Partnership Corporation, the Housing Action Coalition, and the San Francisco Bay Area Planning and Urban Research Association request permission to file the attached amicus curiae brief in support of appellants City Council of the City of Pacifica, City of Pacifica, Monterey Road Pacifica, LLC, Javier Chaverria, and Vistamar Development.

Amici YIMBY Law, Californians for Homeownership, Inc., the California Housing Defense Fund, and the Housing Action Coalition are nonprofit organizations committed to legal and policy advocacy to address California's housing crisis. Amici conduct and publish policy research, advise policymakers, and take legal action to ensure compliance with state laws that encourage the building of much-needed housing.

Amici the Bay Area Council and the San Francisco Bay Area Planning and Urban Research Association (SPUR) are nonprofit organizations dedicated to ensuring the Bay Area is an innovative, equitable, and sustainable region. The Bay Area Council and SPUR conduct policy research and advocacy on the major challenges facing the Bay Area, including its lack of affordable housing. Bay Area Council personnel also regularly

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attend planning commission and city council meetings to advocate for the approval of housing applications.

Amicus the California Housing Partnership Corporation is a nonprofit organization created by the Legislature in 1988 to facilitate the development of affordable housing for low-income residents. (See Health & Saf. Code, §§ 52535–52561.) Along with conducting policy research and advocacy, the California Housing Partnership provides technical assistance to nonprofit housing corporations—consulting on hundreds of multifamily housing projects that have produced more than 96,000 housing units.

The California Building Industry Association (CBIA) is the state's leading nonprofit trade association for people and entities involved in the planning, construction, and provision of homes for the people of California. CBIA has more than 2,500 members who employ about 100,000 people and are responsible for providing about 80 percent of all new homes built and sold annually in California. CBIA advocates for its members' interests before the Legislature and the courts, including through amicus curiae briefs, and advocates for legal rules that will help address California's housing shortage.

Amici believe that, to provide affordable, sustainable, and equitable housing for the current and future residents of California, local governments need to allow much more housing to be built. This belief accords with the view of the California Legislature, which estimates that California must add about two

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million more units of housing to meet its residents' needs. (Gov. Code, § 65589.5, subd. (a)(2)(D).)[1]

This case involves the proper interpretation of Assembly Bill No. 1633 (2023–2024 Reg. Sess.) (AB 1633) (Stats. 2023, ch. 768). As explained further below, AB 1633 aims to encourage local governments to approve more housing by, among other things, limiting attorneys' fees in lawsuits brought under the California Environmental Quality Act (CEQA) that seek to impede or delay housing approvals. Amici are interested in this case because the trial court's erroneous interpretation of AB 1633 undermines that statute and, if left uncorrected, will prevent it from achieving the pro-housing goals the Legislature intended.

Amici are also interested in this case because many of them were involved in the Legislature's consideration and adoption of AB 1633. The Bay Area Council, the California Housing Partnership Corporation, the Housing Action Coalition, and SPUR co-sponsored the bill. (3 AA 1854.) CBIA and YIMBY Law's affiliate, YIMBY Action, also supported the bill. (3 AA 1854–1855.)

This brief can assist this Court by explaining the statutory context and motivation for AB 1633 and by clarifying how the trial court's interpretation of AB 1633 undermines the Legislature's purpose.[2]

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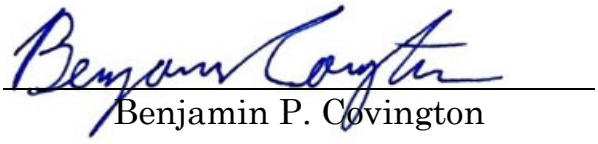
[1] All further statutory references are to the Government Code unless otherwise indicated.

[2] No party or counsel for a party in the pending appeal authored this proposed brief in whole or in part or made a monetary

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July 17, 2025

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contribution intended to fund the preparation or submission of the proposed brief. No person or entity other than amici, their members, or their counsel made a monetary contribution intended to fund the preparation or submission of the proposed brief. (See Cal. Rules of Court, rule 8.200(c)(3).)

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AMICUS CURIAE BRIEF

INTRODUCTION

When a local government considers an application to build housing, it faces cross-pressures from two land-use statutes. The Housing Accountability Act (HAA) requires the local government to approve applications consistent with applicable zoning laws, while the California Environmental Quality Act (CEQA) requires the local government to conduct often burdensome and time-consuming environmental reviews. Recognizing this tension, the Legislature in 2023 enacted Assembly Bill No. 1633, which limits the availability of attorneys' fees when a local government reasonably attempts to navigate its competing duties under the HAA and CEQA—even if it is later found to have done so in error. By awarding over $1.2 million in fees in a CEQA lawsuit challenging an eight-unit housing development, the trial court erroneously restored the same strict liability standard for attorneys' fees in CEQA actions that AB 1633 eliminated.

AB 1633 is an important part of the Legislature's response to California's worsening housing crisis. The Legislature became concerned that some local governments were taking an overly cautious approach to CEQA compliance, conducting unnecessary layers of environmental review out of a concern that any CEQA violation would automatically put the local governments and project applicants on the hook for a CEQA challenger's attorneys' fees. This pernicious practice delayed the development of new housing, drove up costs, and sometimes rendered projects infeasible altogether. So to encourage more tailored CEQA

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compliance that would result in more housing being built more quickly, the Legislature adopted a two-pronged approach in AB 1633. AB 1633 authorizes a project applicant to seek immediate judicial review under the HAA if it believes the local government is requiring a layer of CEQA review that the evidence doesn't call for. And importantly here, AB 1633 limits the availability of attorneys' fees in a CEQA challenge to a housing approval. The first prong operationalizes the Legislature's expectation that local governments should aim for more calibrated CEQA compliance. The second prong then insulates local governments from often-large attorneys' fees awards if they reasonably aim for that calibrated compliance but are later found to have erred.

The trial court's interpretation of AB 1633 in this case undermines that legislative purpose. The trial court erroneously conflated any violation of CEQA with unreasonable conduct that warrants an award of attorneys' fees—despite AB 1633 rejecting that very premise. And the trial court implausibly concluded that AB 1633's fees-limiting provision does not apply unless the challenged housing development would make up a large chunk of the state's housing shortage of over 2 million units. That subjective eye-of-the-beholder test is nowhere to be found in AB 1633's text or legislative history. It's also an impossible-to-meet standard that would render AB 1633 inapplicable to the very housing development that motivated the statute's adoption.

This Court should correct the trial court's misinterpretation of AB 1633. If left undisturbed, the trial court's ruling threatens to nullify a measured law encouraging the building of

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much-needed housing. This Court should either reverse the trial court's fees order or vacate it and remand for further proceedings under an accurate interpretation of AB 1633.

LEGAL ARGUMENT

I. Unnecessary delays in the housing approval process contribute to California's housing crisis.

A. California has a housing crisis.

The Legislature has expressly found that California has a housing "affordability crisis of historic proportions," which "stifl[es] economic opportunities for workers and businesses, worsen[s] poverty and homelessness, and undermin[es] the state's environmental and climate objectives." (§ 65589.5, subd. (a)(2)(A).) More than half of renters and more than 40 percent of homeowners are cost-burdened by their housing—meaning they spend more than 30 percent of their household income on their rent or mortgage payments. (Public Policy Institute of California, *Californians and the Housing Crisis* <https://tinyurl.com/2pjr764f> [as of July 15, 2025].) And the average home in California now costs *eleven times* the average household income. (Christopher & Tobias, *Californians: Here's Why Your Housing Costs Are So High* (Oct. 15, 2024) Cal Matters <https://tinyurl.com/25bpb4yw> [as of July 15, 2025].)

The Legislature has further found that the state's housing affordability crisis is driven by a "housing *supply*" crisis. (§ 65589.5, subd. (a)(2)(A), emphasis added.) There is a "lack of housing" in the state, with California having about *two million* fewer housing units than its residents need. (§ 65589.5, subd.

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(a)(1)(A) & (2)(D).) This "underserved demand[ ]" for housing, when combined with a "constrained supply" of new housing, causes "protracted unaffordability." (§ 65589.5, subd. (a)(2)(C).) Fewer units of housing lead to more people competing to rent or buy them—causing prices to soar.

B. Unnecessary delays in the housing approval process decrease the amount of both market-rate and subsidized housing in the state.

It takes much longer for housing to be approved in California than it does in much of the country. For example, the permitting process in California for market-rate multi-family housing takes, on average, 7 months longer than in Colorado and 14 months longer than in Texas. (Ward & Schlake, *The High Cost of Producing Multifamily Housing in California: Evidence and Policy Recommendations* (Apr. 2, 2025) Rand Corporation, p. 32 <https://tinyurl.com/yet42f56> [as of July 15, 2025].) The longer a project sits in limbo, the longer a project applicant has to bear its carrying costs (e.g., property taxes, insurance premiums, maintenance costs, and financing costs) without any offsetting revenue from the project.

For market-rate housing, increased costs lead to increased "break-even rents" needed for a development to be financially viable. (Ward & Schlake, *supra*, at p. v; see Garcia et al., *Making It Pencil: The Math Behind Housing Development* (2023 Update) Terner Center for Housing Innovation, University of California at Berkeley, pp. 3, 13–14 <https://tinyurl.com/5b2ppv8s> [as of July 15, 2025] ["any project must demonstrate the ability to meet an

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acceptable financial return in order to obtain the capital necessary to pay for the construction and operation of the project"].) Sometimes, the costs can get so high that—as AB 1633's legislative history documents—they can render a development "financially infeasible" altogether. (Analysis of Assem. Bill No. 1633 (2023–2024 Reg. Sess.) as amended Sept. 8, 2023, p. 3 (AB 1633 Assembly Floor Analysis).) The risk of prolonged delays can also have a "chilling effect" that discourages more risk-averse parties from even attempting to build the housing Californians so desperately need. (California Assembly Select Committee on Permitting Reform, *Final Report* (Mar. 2025) p. 2 <https://tinyurl.com/kah7bc2t> [as of July 15, 2025].)

A similar dynamic impacts rent-controlled, government-subsidized housing. When delays cause per-unit costs to increase, so too does the size of the government subsidy needed to develop the housing while maintaining its below-market rent. In other words, as costs increase, "the same pool of public money produces fewer apartments." (Ward & Schlake, *supra*, at p. v.) Indeed, if the costs of building government-subsidized housing in California were comparable to those in Colorado, then the $1.25 billion that the state has spent on public housing in recent years would have produced four times as many affordable housing units. (*Id.* at p. vi.)

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II. AB 1633 aims to increase California's housing supply by clarifying how two land-use statutes interact.

A. The Housing Accountability Act (HAA) requires local governments to approve housing proposals that comply with zoning laws.

In 1982, the Legislature enacted the HAA, which is "colloquially known as the 'Anti-NIMBY' (Not-In-My-Back-Yard) law." (*California Renters Legal Advocacy & Education Fund v. City of San Mateo* (2021) 68 Cal.App.5th 820, 835 (*CARLA*).) The HAA requires a local government to approve housing applications that comply with applicable zoning laws unless the local government makes written findings that the project would have a "specific, adverse impact upon the public health or safety." (§ 65589.5, subd. (j)(1); *CARLA*, at p. 835.) If an applicant believes a project has been improperly denied, it can bring an action under the HAA seeking a writ of mandate compelling the local government's approval. (§ 65589.5, subd. (m)(1).)

The HAA is built on several legislative findings, including those already mentioned: that California "has a housing supply and affordability crisis of historic proportions," with about two million fewer housing units than its residents need. (§ 65589.5, subds. (a)(1)(D) & (a)(2)(A).) The Legislature also found that the HAA's mandated-approval mechanism was needed because of the "policies of many local governments that limit the approval of housing" and give inadequate "attention to the economic, environmental, and social costs of decisions" rejecting housing applications or conditioning their approval on a "reduction in density." (§ 65589.5, subd. (a)(1)(B) & (1)(D).)

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The HAA comes equipped with a liberal construction provision, specifying that it must be "implemented" by local governments and "interpreted" by the courts "in a manner to afford the fullest possible weight to the interest of, and the *approval* and provision of, housing." (§ 65589.5, subd. (a)(2)(L), emphasis added.) And the Legislature has repeatedly strengthened the HAA's mandated-approval mechanism. (See *CARLA*, *supra*, 68 Cal.App.5th at p. 835–836.)

B. CEQA requires local governments to follow a three-step process when assessing a housing application's environmental effects.

CEQA prescribes a multi-step process for evaluating a project's environmental effects. (*California Building Industry Assn. v. Bay Area Air Quality Management Dist.* (2015) 62 Cal.4th 369, 382 (*CBIA*).) A local government need not always conduct all of CEQA's layers of environmental review—instead, that exhaustive review is required only when the evidence calls for it. So where appropriate, a local government may stop its review at one of CEQA's earlier steps.

Exemption. The local government begins by deciding "whether the project is exempt from the CEQA review process." (*CBIA*, *supra*, 62 Cal.4th at p. 382, citations omitted.) If it is, then the local government does not proceed to CEQA's next step.[3]

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[3] When describing CEQA's steps, this brief tracks the actions that AB 1633 addresses: (1) "whether to approve or disapprove a statutory or categorical exemption"; (2) whether to issue "a negative declaration"; and (3) whether to certify an

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Negative declaration. If no exemption applies, then the local government must conduct an "initial study" of whether the housing development will have " 'a significant effect on the environment.' " (*Union of Medical Marijuana Patients, Inc. v. City of San Diego* (2019) 7 Cal.5th 1171, 1186; see Pub. Resources Code, § 21064.) If the answer is no, then the local government issues a negative declaration or a mitigated negative declaration—with the latter coming after the local government has placed binding mitigation requirements on the project. (See Pub. Resources Code, §§ 21064, 21064.5.) When making that decision, the local government must consider a host of effects, including a project's "aesthetic" effects. (See *id.*, § 21060.5.)

When deciding whether to issue a negative declaration, the local government uses a standard similar to what trial courts use when reviewing a JNOV motion. It asks whether " 'it can be fairly argued on the basis of *substantial evidence* that the project may have [a] significant environmental impact.' " (*Jensen v. City of Santa Rosa* (2018) 23 Cal.App.5th 877, 884, emphasis added.) As in the JNOV context, the local government assesses whether the facts meet the substantive legal standard—here, that the

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"environmental impact report." (See § 65589.5, subd. (h)(6)(J)(i).) Other sources number CEQA's steps slightly differently, without any substantive difference as to what CEQA ultimately requires. (See, e.g., 8 Miller & Starr, Cal. Real Estate (4th ed. 2025) § 26:4, fn. 50 [courts "have not always been consistent about what steps are encompassed within each tier"]; *CBIA*, *supra*, 62 Cal.4th at p. 382 [describing the first step as whether an action is a CEQA "project," and collapsing into step two both exemptions and negative declarations].)

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asserted effects are "significant." (See *McCann v. City of San Diego* (2021) 70 Cal.App.5th 51, 89.) And just as speculative expert evidence cannot support a jury verdict, "unsubstantiated opinion" cannot support an argument that a project may have significant environmental effects. (See Pub. Resources Code, § 21082.2.) If substantial evidence does *not* support such an argument, then the local government issues a negative declaration—finishing the CEQA process for that project. But if the evidence *does* support a "fair argument," then the local government must proceed to CEQA's next step.

EIR. At CEQA's final step, the local government must prepare an environmental impact report (EIR), conduct the notice and comment process, certify the EIR, and find that the project's environmental effects have either been mitigated or are outweighed by the project's benefits. (*Laurel Heights Improvement Assn. v. Regents of University of California* (1993) 6 Cal.4th 1112, 1124.) This process generally "cannot be completed in less than ten months and often takes two years or longer, and cannot be completed for less than $300,000." (Hernandez, *In the Name of the Environment Part III: CEQA, Housing, and the Rule of Law* (2022) 26 Chap. L.Rev. 57, 65, 136 (*Rule of Law*).)

CEQA lawsuits. If a litigant believes the local government failed to properly conduct a required CEQA step, it can seek a writ of mandate. (See Code Civ. Proc., §§ 1084, 1094.5; Pub. Resources Code, §§ 21167–21168.) In practice, housing has proven to be a primary focus of CEQA lawsuits. From 2013 to 2015, nearly 60 percent of CEQA lawsuits

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challenged actions that approved or planned for more housing. (Hernandez, *California Environmental Quality Act Lawsuits and California's Housing Crisis* (2018) 24 Hastings Envtl. L.J. 21, 26, fig. 1.) And from 2019 to 2021, CEQA lawsuits challenged the approval of about 48,000 housing units and government actions planning for over one million units. (*Rule of Law*, *supra*, 26 Chap. L.Rev. at p. 65.) "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, 781–783.)

If a CEQA plaintiff prevails—here, for example, by obtaining a writ ordering that an EIR be prepared—then it can move for attorneys' fees under California's private attorneys general statute, which authorizes fees when, among other things, a lawsuit confers a "significant benefit" on "the general public or a large class of persons." (Code Civ. Proc., § 1021.5.) The Legislature "did not intend to authorize an award of attorney fees in every case involving a statutory violation." (*Woodland Hills Residents Assn., Inc. v. City Council* (1979) 23 Cal.3d 917, 939.) But courts have treated CEQA differently, and pre-AB 1633 precedent developed such that virtually *any* CEQA violation led to attorneys' fees. (See, e.g., *Keep Our Mountains Quiet v. County of Santa Clara* (2015) 236 Cal.App.4th 714, 738 [affirming fees award in CEQA challenge to EIR, even though the judgment "did not require . . . any additional studies for the EIR or impose any new mitigation measures"].)

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C. AB 1633 arose out of the Legislature's concern that local governments had elevated CEQA over the HAA—reflexively requiring maximalist environmental review even when not needed.

When enacting AB 1633, the Legislature recognized that the HAA and CEQA "can result in gray areas of conflict" since the two statutes take "different approaches to housing development." (AB 1633 Assembly Floor Analysis, at p. 3.) While the HAA aims to increase California's housing supply by requiring local governments to approve qualifying housing applications, CEQA requires local governments to subject those applications to costly and time-consuming environmental reviews.

AB 1633 reflects the Legislature's concerns with *how* local governments had often navigated those "gray areas." The Legislature concluded that some local governments prioritized belt-and-suspenders CEQA compliance to the detriment of the HAA's pro-housing goals. Those local governments reflexively required the "exhaustive analysis" of an EIR (and sometimes a supplemental EIR) even though "it is not always warranted." (AB 1633 Assembly Floor Analysis, at p. 2.) They were, in other words, "requiring CEQA analysis beyond" what CEQA and the evidence in particular instances actually required. (*Id.* at p. 3.)

The Legislature found that this over-the-top approach to CEQA compliance was not harmless. As explained, redundant environmental reviews "unreasonably delay[ ]" a housing project and risk "render[ing] it infeasible" altogether. (AB 1633 Assembly Floor Analysis, at p. 3; see *ante*, section I.B.)

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The Legislature further found a major cause of this approach was local governments' fear that any misstep under CEQA would leave them—and project applicants—on the hook for attorneys' fees in a subsequent CEQA action. (See AB 1633 Assembly Floor Analysis, at p. 2 ["Some local agencies conduct redundant environmental review to avoid CEQA lawsuits from neighbors or interest groups"]; see also *Rule of Law*, *supra*, 26 Chap. L.Rev. at p. 136 ["CEQA practice evolved into doing an EIR if the project was likely to be sued by someone with money or other resources, even if the project was environmentally benign or beneficial"].)

The Legislature's concerns were most pronounced when it came to "infill housing," which is built in already urbanized areas. By reducing urban sprawl, infill housing is a "powerful policy tool . . . to reduce greenhouse gas emissions." (AB 1633 Assembly Floor Analysis, at p. 4.) But because infill housing by definition "is located in places where there are existing uses on adjacent sites," there "will always be neighbors or others nearby" with an incentive to bring a CEQA suit. (*Id.* at p. 2.) The most environmentally beneficial housing is also the type of housing most likely to be the subject of a CEQA lawsuit.[4]

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[4] Since enacting AB 1633, the Legislature has continued to be concerned about CEQA lawsuits' impact on infill housing. One recently enacted bill exempts much infill housing from CEQA altogether, while another bill streamlines CEQA review for those infill projects that come just short of qualifying for the categorical exemption. (See, e.g., Lauren Berg, *Newsom Signs CEQA Reform, Aiming To Ease Housing Crisis* (July 1, 2025) Law360 <https://tinyurl.com/wvmc5wf5> [as of July 15, 2025].)

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When enacting AB 1633, the Legislature had a recent example of this dynamic front of mind. An applicant proposed a 500-unit apartment building in downtown San Francisco at 469 Stevenson Street. (AB 1633 Assembly Floor Analysis, at p. 3.) The Board of Supervisors "cited various vague concerns," including about the shadows that would be cast by the apartment building, to require that a new EIR be prepared and circulated for another round of notice and comment. (*Id.* at p. 3.) While the Board's actions were concerning (including to the state's housing agency), the pre-AB 1633 status quo encouraged that approach to CEQA compliance and left project applicants without any remedies to challenge unnecessary layers of CEQA review.

D. AB 1633 takes a two-pronged approach to counteract excessive and unnecessary CEQA review.

AB 1633 incentivized local governments to calibrate their CEQA review of a housing application with what they believe that statute actually requires—instead of taking the belt-and-suspenders approach to CEQA compliance that was exemplified by the San Francisco Board of Supervisors' review of the 469 Stevenson Street development.

***First*,** AB 1633 clarified the HAA so that a prohibited denial of housing includes not just an outright rejection but also the failure to determine a project qualifies for a CEQA exemption, the failure to issue a negative declaration, and the failure to certify an EIR—provided that the housing application meets certain criteria. (See AB 1633 Assembly Floor Analysis, at

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p. 3; § 65589.5, subd. (h)(6)(J)(i).) Under AB 1633, an applicant with a qualifying project can seek immediate judicial review under the HAA if it believes a local government is requiring a layer of CEQA review not actually called for by the facts.

Second, AB 1633 modified how California's private attorneys general statute applies when a litigant seeks attorneys' fees for a CEQA challenge to a housing approval. AB 1633 added subdivision (p) to the HAA, which reads as relevant here:

> Upon any motion for an award of attorney's fees pursuant to Section 1021.5 of the Code of Civil Procedure, in a case challenging a local agency's approval of a housing development project, a court, in weighing whether a significant benefit has been conferred on the general public or a large class of persons and whether the necessity of private enforcement makes the award appropriate, shall give due weight to the degree to which the local agency's approval furthers policies of this section, including, but not limited to, subdivisions (a), (b), and (c), the suitability of the site for a housing development, and the reasonableness of the decision of the local agency.

(AB 1633, § 2, at p. 21; § 65589.5, subd. (p).)[5]

By adding this subdivision, AB 1633 "provide[d] some additional protections for local governments who have been sued by neighbors or interest groups for approving a housing

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[5] Subdivision (p) has a second sentence that does not apply in this case: "It is the intent of the Legislature that attorney's fees and costs shall rarely, if ever, be awarded if a local agency, acting in good faith, approved a housing development project that satisfies conditions established in paragraph (1), (2), or (3) of subdivision (a) of Section 65589.5.1 or paragraph (1), (2), or (3) of subdivision (a) of Section 65589.5.2."

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development project." (AB 1633 Assembly Floor Analysis, at p. 4.) In particular, this subdivision displaced the old CEQA status quo under which attorneys' fees were nearly automatic. (*Ante*, p. 20.) Now, fees are generally available to a CEQA litigant challenging a housing development project only if the local government acted *unreasonably*—with that inquiry also accounting for the HAA's pro-housing goals.[6]

This newly added subdivision also brought the Legislature's treatment of CEQA attorneys' fees into line with its treatment of HAA attorneys' fees. Under a provision that predated AB 1633, the HAA already limited the fees available to a successful HAA litigant challenging the denial of a housing application if the local government "acted in good faith and had reasonable cause" under CEQA to deny the application. (§ 65589.5, subd. (k)(1)(A)(ii)(II)(ia).)

* * *

AB 1633's two prongs work in tandem. The first prong establishes an expectation that local governments will aim for more calibrated CEQA compliance—and imposes a consequence (an immediate HAA suit) if a local government doesn't do so. The second prong then protects a local government from having to pay a successful CEQA challenger's attorneys' fees if it reasonably

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[6] The cross-referenced subdivisions—(a), (b), and (c)—codify the Legislature's findings in the HAA that California has a housing crisis, that California has a two million housing-unit deficit, and that it is the policy of the state to not render much-needed housing infeasible. (See *ante*, pp. 13–14, 16.)

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attempts to meet the Legislature's pro-housing expectation but is later found by a court to have omitted a step required by CEQA.

III. The trial court's attorneys' fees order undermines AB 1633.

A. The trial court reinstated the strict liability framework for attorneys' fees that AB 1633 abolished.

This CEQA lawsuit arose out of Pacifica's approval of an eight-unit residential development, which included one deed-restricted below-market unit. (RPI AOB 9–10.) Pacifica conducted an initial study, imposed multiple mitigation requirements, and found that—with those mitigation requirements—there was no "fair argument" that the development would have significant environmental effects. (RPI AOB 11.) The trial court disagreed, concluding that a full EIR was required on top of Pacifica's initial study. (RPI AOB 14.) The trial court then used a 1.5 multiplier to award over $1.2 million in attorneys' fees to plaintiffs, with the city and project applicants jointly liable for paying the award. (4 AA 2108.)

The trial court's fees order misinterpreted AB 1633. While the trial court made several errors (see City AOB 36–47; RPI AOB 33–52), this brief focuses on two that vitiate the core of what the Legislature intended to accomplish through AB 1633.

The trial court first erred by conflating *any* violation of CEQA with *unreasonable* conduct that justifies an award of attorneys' fees under AB 1633. (RPI AOB 50–51.) The trial court acknowledged that Pacifica needed to "balance [an] array of laws, including CEQA and HAA," and it found there was "much for the

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court to commend" in how Pacifica went about doing so. (4 AA 2115.) It also noted that Pacifica "expended a great deal of time and resources to make a decision to approve the project." (*Ibid.*) Yet the trial court found that Pacifica "acted unreasonably" simply because the court concluded that a full "EIR should have been performed," while Pacifica concluded only an initial study and a mitigated negative declaration were required. (*Ibid.*)

The trial court never examined whether Pacifica's attempt at navigating the HAA's and CEQA's cross-pressures was reasonable under precedent and the facts, even if ultimately erroneous. It simply equated a violation of CEQA with unreasonable conduct.

In doing so, the trial court reimposed the very strict liability for attorneys' fees under CEQA that AB 1633 eliminated. It also undermined AB 1633's ultimate purpose of encouraging local governments to engage in more calibrated CEQA compliance—rather than the belt-and-suspenders approach many local governments had taken in the past. Nullifying AB 1633's fees-protection provision in this fashion reinstates the incentive for local governments to follow the old approach to CEQA compliance, meaning local governments—contrary to what the Legislature intended—will once again have to walk on eggshells when conducting environmental reviews.

The HAA's liberal construction provision confirms that the trial court misinterpreted AB 1633. Subdivision (a)(2)(L) provides that "this section [i.e., section 65589.5]" is to be interpreted "to afford the fullest possible weight to the interest of,

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and the approval and provision of, housing." As explained, the trial court's CEQA-violation-equals-fees approach will do the opposite by encouraging local governments to always subject housing applications to the most exhaustive CEQA review.[7]

B. The trial court erroneously interpreted AB 1633 to apply only when a housing application meets some unspecified and insurmountable significance threshold.

The trial court also erred when it grafted a vague and seemingly insurmountable significance threshold onto AB 1633. The trial court acknowledged that AB 1633's fees-limiting provision requires consideration of whether fees would advance the HAA's purpose of promoting the approval of new housing developments. (4 AA 2113.) But the trial court concluded approval of the housing application here would not have advanced that purpose because an eight-unit development is "almost inconsequential" when compared to a "shortage of two million housing units." (*Ibid.*) The trial court then concluded that it was Pacifica's and real parties in interest's obligation to produce some unspecified type of evidence that approving the housing application in question would have had an "impact on the economic and social quality of life in California." (*Ibid.*)

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[7] Without explanation, plaintiffs assert that the HAA's liberal construction provision does not apply to the fees-limiting provision. (RB 39.) The plain text of the provision proves plaintiffs wrong. The liberal construction provision applies to "this section"—that is, section 65589.5—and the fees-limiting provision is codified there.

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But this threshold requirement for application of AB 1633's fees-limiting provision is nowhere to be found in AB 1633's text or its legislative history. And while the trial court does not explain what a housing application must do to get past this threshold, it seems the trial court's test would be nearly impossible to meet in practice. California has 58 counties and nearly 500 cities. (Institute for Local Government, *Types and Responsibilities of Local Agencies* (2012) pp. 1–2 <https://tinyurl.com/2k6u87bv> [as of July 15, 2025].) No single local government will ever—as the trial court seemingly contemplated—have a moonshot housing application before it. Instead, solving the state's housing crisis will require all of the state's hundreds of local governments to do their part to chip away at the two-million-unit housing shortage. (See City AOB 39–40; RPI AOB 36.)[8]

Indeed, the trial court's approach would render AB 1633 inapplicable to the very housing development that motivated its enactment: 469 Stevenson Street in downtown San Francisco. That 500-unit building, like the eight-unit building here,

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[8] Legislative enactments back up this common-sense proposition. The Legislature has established a Regional Housing Needs Assessment (RHNA) process, under which each local government is assigned a number of units it must account for. (See § 65584.) And the Legislature has required local governments to codify their efforts to meet their allocated share of housing needs in periodically updated planning documents called "housing elements." (See § 65583.) These local-level actions would, however, be deemed "almost inconsequential" under the trial court's approach—despite the Legislature's requiring them and subjecting them to oversight by the courts, the public, and a state agency.

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comprises a tiny fraction of California's housing shortage (0.025%). So, under the trial court's interpretation, 469 Stevenson Street would fall outside AB 1633's scope. This interpretation of a statute that would render it inapplicable to the very facts that motivated its adoption is not a faithful interpretation of the Legislature's intent.

Finally, the trial court's interpretation would inexplicably exclude from AB 1633 the smaller projects that most need its protection. To reach California's housing and climate goals, the Legislature has recently sought to encourage the building of "missing middle" housing—a category that includes accessory dwelling units (ADUs), duplexes, condos, and smaller apartment buildings. (See Garcia et al., *Unlocking the Potential of Missing Middle Housing* (2022) Terner Center for Housing Innovation, University of California at Berkeley, p. 1 <https://tinyurl.com/yua2krpb> [as of July 15, 2025].) These types of projects are, however, uniquely likely to be rendered infeasible by increased costs. Missing middle projects are often built by small businesses (and sometimes, individual homeowners) which are unable to obtain capital from larger financial institutions. (*Id.* at pp. 11–14.) As a result, those small businesses or homeowners are likely to have "a significant share" of their own capital "tied up in a single" project. (*Id.* at p. 11.) Having to bear all or part of a large attorneys' fees award could therefore prove prohibitive. Here, for example, the trial court's award of $1.2 million in fees amounts to a roughly $150,000-*per-unit* increase in the development costs for the eight-unit project at issue.

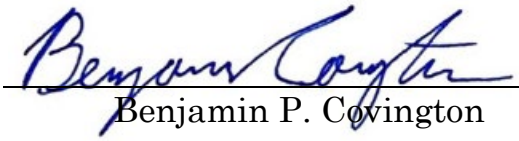
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CONCLUSION

For the above reasons, this Court should reverse or vacate and remand the trial court's fees order, and make clear that (1) the trial court erred when it conflated any CEQA violation with unreasonableness under AB 1633, and (2) the trial court erred when it concluded AB 1633 is inapplicable unless a housing application ameliorates a large portion of California's two-million-unit housing shortage.

July 17, 2025

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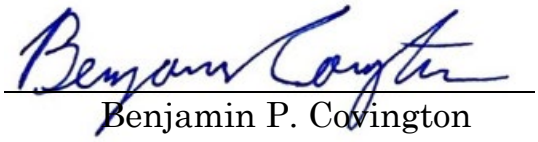
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Dated: July 17, 2025



Benjamin P. Covington

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PROOF OF SERVICE

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Case No. A170704

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 3601 West Olive Avenue, 8th Floor, Burbank, CA 91505-4681.

On July 17, 2025, I served true copies of the following document(s) described as **APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF AND AMICUS CURIAE BRIEF OF YIMBY LAW, BAY AREA COUNCIL, CALIFORNIA BUILDING INDUSTRY ASSOCIATION, CALIFORNIANS FOR HOMEOWNERSHIP, INC., CALIFORNIA HOUSING DEFENSE FUND, CALIFORNIA HOUSING PARTNERSHIP CORPORATION, HOUSING ACTION COALITION, AND SAN FRANCISCO BAY AREA PLANNING AND URBAN RESEARCH ASSOCIATION, IN SUPPORT OF APPELLANTS** on the interested parties in this action as follows:

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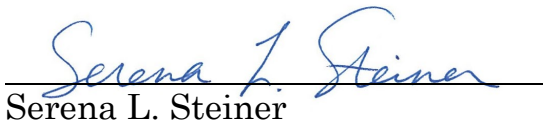
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on July 17, 2025, at Sherman Oaks, California.



Serena L. Steiner

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Hon. Nancy L. Fineman, Dept. 4 San Mateo County Superior Court Southern Courthouse 400 County Center Redwood City, CA 94063 (650) 261-5104	Trial Court Judge Case No. 20CIV05719 ***Via U.S. Mail***

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