



## CEQA Exemption in AB 140 for Homekey Round 2 Projects: Questions and Answers

AB 140 (2021) establishes a statutory exemption from the California Environmental Quality Act (CEQA) for activities funded by Homekey Round 2. (Health & Saf. Code, § 50675.1.4.) The CEQA exemption may apply when Homekey Round 2 funds—which consists of \$1.45 billion in Homekey grant funds, \$1.2 billion is derived from the state’s direct allocation of the federal Coronavirus State Fiscal Recovery Fund (CSFRF), which was established by the American Rescue Plan Act of 2021 (ARPA) (Pub. L. No. 117-2), and \$250 million is derived from the state’s General Fund—are used to provide housing for those who are experiencing homelessness or at risk of homelessness and are impacted by or at increased risk for medical diseases or conditions due to the COVID-19 pandemic or other communicable diseases. (Health & Saf. Code, §§ 50675.1.3, 50675.1.4; Homekey Program Notice of Funding Availability, Round 2 (Homekey Round 2 NOFA), September 9, 2021, sec. 100.)

This document provides the text of the CEQA exemption in AB 140, and also responds to some common questions that may arise as applicants are considering whether and how to use the exemption.

**Project applicants and local permitting agencies should note the CEQA exemption’s relatively short effective life.** The exemption remains in effect only until July 1, 2024 and is repealed as of that date. For this reason, project applicants and local permitting agencies should determine the scope of all necessary project components and consider any associated project approvals to maximize their use of the exemption.

**This document offers guidance and should not be construed as legal advice.** Applicants should consult with their counsel for legal advice in construing the exemption and how it may apply to their projects. It is entirely within an applicant’s discretion to determine whether to use the AB 140 CEQA exemption, whether the exemption applies to the applicant’s proposed activity, and whether some other mechanism applies and could be used to satisfy obligations under CEQA. Applicants who have additional questions may contact Department of Housing and Community Development staff at [Homekey@hcd.ca.gov](mailto:Homekey@hcd.ca.gov).



## Text of the CEQA Exemption in AB 140

Pursuant to AB 140, the following CEQA statutory exemption has been added to Health and Safety Code section 50675.1.4:

(a) Notwithstanding any other law, the California Environmental Quality Act (Division 13 (commencing with section 21000) of the Public Resources Code) shall not apply to any project, including a phased project, funded pursuant to section 50675.1.3 if all of the following requirements, if applicable, are satisfied:

- (1) No units were acquired by eminent domain.
- (2) The units will be in decent, safe, and sanitary condition at the time of their occupancy.
- (3) The project proponent shall require all contractors and subcontractors performing work on the project to pay prevailing wages for any proposed rehabilitation, construction, or major alterations in accordance with Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code.
- (4) The project proponent obtains an enforceable commitment that all contractors and subcontractors performing work on the project will use a skilled and trained workforce for any proposed rehabilitation, construction, or major alterations in accordance with Chapter 2.9 (commencing with Section 2600) of Part 1 of Division 2 of the Public Contract Code.
- (5) The project proponent submits to the lead agency a letter of support from a county, city, or other local public entity for any proposed rehabilitation, construction, or major alteration work.
- (6) Any acquisition is paid for, in whole or part, with public funds.
- (7) The project provides housing units for individuals and families who are experiencing homelessness or who are at risk of homelessness.

(8) Long-term covenants and restrictions require the units to be restricted to persons experiencing homelessness or who are at risk of homelessness, which may include lower income and very low income households, as defined by Section 50079.5, for no fewer than 55 years.

(9) The project does not result in an increase in the existing onsite development footprint of structure, structures, or improvements by more than 10 percent. Any increase to the existing, onsite development footprint shall be exclusively to support the provision of or conversion to housing for the designated population, including, but not limited to, both of the following:

- (A) Achieving compliance with local, state, and federal requirements.
- (B) Providing sufficient space for the provision of services and amenities.

(b) If the lead agency determines that a project is not subject to the California Environmental Quality Act pursuant to this section, and the lead agency determines to approve or to carry out that project, the lead agency shall file a notice of exemption with the Office of Planning and Research and the county clerk of the county in which the project is located in the manner specified in subdivisions (b) and (c) of section 21152 of the Public Resources Code.

(c) This section shall remain in effect only until July 1, 2024, and as of that date is repealed.



## Which projects can use the exemption?

Projects that utilize money from Homekey Round 2 funds, regardless of whether they also utilize other funding sources, may be eligible for the CEQA exemption. (Health & Saf. Code, § 50675.1.4.) The eligibility requirements for these funds are set out in the Homekey Program Notice of Funding Availability, Round 2 (Homekey Round 2 NOFA), available at <https://www.hcd.ca.gov/>.

In addition to the CEQA exemption, AB 140 provides significant land-use streamlining for projects utilizing Homekey Round 2 funds. This land use “exemption” is independent of the CEQA exemption and applies to all Homekey Round 2 funded projects.

All Homekey Round 2 projects are eligible for such streamlining and are “deemed consistent and in conformity with any applicable local plan, standard, or requirement, and any applicable coastal plan, local or otherwise, and allowed as a permitted use, within the zone in which the structure is located, and shall not be subject to a conditional use permit, discretionary permit, or any other discretionary reviews or approvals.” (Health & Saf. Code, § 50675.1.3, subd. (h).) This means that any project using money from Homekey Round 2 funds for any of the purposes listed in the Homekey Round 2 NOFA is deemed consistent with all applicable local regulatory plans and regulations such as the local general plan and local codes and ordinances. Such projects do not need to undergo any discretionary local permit review or approval process (e.g., a discretionary use permit process) before being able to proceed with the project. Notably, AB 140 did not place time limits on the use of this land use exemption, in contrast to the CEQA exemption, which is time-limited.

## What additional restrictions apply to projects under the exemption?

Conditions for the application of the Homekey CEQA exemption include:

- o The project utilizes Homekey Round 2 funds;
- o The project provides housing units for individuals and families who are experiencing homelessness or who are at risk of homelessness; and
- o The units will be in decent, safe, and sanitary condition at the time of their occupancy.

(Health & Saf. Code, § 50675.1.4, subds. (a)(2), (a)(7).)

Further conditions apply depending on the nature of the proposed project, and are summarized below.

### Acquisition-Only Projects

Some projects proposing to use Homekey funds may be acquisition-only projects. These projects do not contemplate rehabilitation, construction, or alterations of acquired units in the near term and include no definite or foreseeable plans for such in the long term. The CEQA exemption applies to projects where applicants demonstrate all of the following:

- o No units were acquired by eminent domain;
- o Any acquisition is paid for, in whole or part, with public funds; and
- o Long-term covenants and restrictions require the units to be restricted to persons experiencing homelessness or who are at risk of homelessness, which may include lower income and very low income households, as defined by Section 50079.5, for no fewer than 55 years.(Health & Saf. Code, § 50675.1.4, subds. (a)(1), (a)(6), (a)(8).)



## Acquisition-Plus and “Phased” Projects

Other projects proposing to use Homekey Round 2 funds may contemplate acquisition of units as well as rehabilitation, construction, or alteration of the acquired units.

The CEQA exemption applies to projects where applicants demonstrate all of the following:

- o No units were acquired by eminent domain;
- o Any acquisition is paid for, in whole or part, with public funds;
- o The project proponent obtains an enforceable commitment that all contractors and subcontractors performing work on the project will use a skilled and trained workforce for any proposed rehabilitation, construction, or major alterations in accordance with Chapter 2.9 (commencing with Section 2600) of Part 1 of Division 2 of the Public Contract Code;
- o The project proponent submits to the lead agency a letter of support from a county, city, or other local public entity for any proposed rehabilitation, construction, or major alteration work;
- o Long-term covenants and restrictions require the units to be restricted to persons experiencing homelessness or who are at risk of homelessness, which may include lower income and very low income households, as defined by Section 50079.5, for no fewer than 55 years; and
- o The project does not result in an increase in the existing onsite development footprint of structure, structures, or improvements by more than 10 percent.

(Health & Saf. Code, § 50675.1.4, subds. (a)(1), (a)(4), (a)(5), (a)(6), (a)(8), (a)(9).)

## Are there certain time restrictions related to the Homekey Round 2 Funds and the CEQA exemption to be aware of?

Yes. The CEQA exemption contains an important time restriction:

- o The exemption remains in effect only until July 1, 2024, and as of that date is repealed.

(Health & Saf. Code, § 50675.1.4, subd. (c).) Because of the relatively short life of the CEQA exemption, project applicants and local permitting agencies should determine the scope of all necessary project components and consider any associated approvals up front to maximize their use of the CEQA exemption.

## What are some examples of activities that may increase the original project footprint and may be allowed under the exemption?

The exemption allows expansion of the footprint of the structure, structures, or other improvements on site, but only if such expansion does not increase the footprint by more than 10 percent. (Health & Saf. Code, § 50675.1.4, subd. (a)(9).)

In addition, any increase to the original footprint must be to support the conversion to housing for the designated population. (Health & Saf. Code, § 50675.1.4, subd. (a)(9).) The exemption does not define the full range of activities that fall within the scope of this purpose, but notes that expansion to support the designated population includes expansions (1) made to comply with local, state, and federal requirements, and (2) to provide enough space for the provision of services and amenities.



Examples of possible increases in the original footprint could include those required to comply with local building codes, the California Building Standards Code (Cal. Code Regs., Title 24), and the Americans with Disabilities Act (42U.S.C. § 12101, et seq.). Additionally, an increase in the original project footprint may include adding square footage to the original footprint to accommodate on-site supportive services or supportive facilities that are needed for longer term occupation than contemplated with the original use.

## Once the local permitting agency has approved the project using the CEQA exemption, are there immediate next steps?

Yes. After project approval, applicants or the lead agency approving the projects who are relying on the CEQA exemption will need to file a notice of exemption with the State Clearinghouse and the relevant county clerk's office. (Health & Saf. Code, § 50675.1.4, subd. (b).) Please check the State Clearinghouse's website <<https://opr.ca.gov/clearinghouse/ceqa/>> and the relevant county clerk's office website for information about filing notices. Notices of exemption must be filed in the manner specified in Public Resources Code section 21152, subdivisions (b) and (c).

## Does Health and Safety Code section 50675.1.4 provide an exemption to the National Environmental Policy Act (NEPA)?

No. The exemption in section 50675.1.4 applies to CEQA only. If the applicant uses other funds from federal grants that trigger NEPA, the applicant would need to engage in their normal processes to comply with NEPA.

## Do all Homekey Round 2 projects have to utilize the CEQA exemption?

No. While the Legislature contemplated that many Homekey Round 2 projects will rely on the CEQA exemption contained in Health and Safety Code section 50675.1.4, no project is required to use the exemption. And not all funded projects will be able to meet the requirements of the CEQA exemption.

Please see the next question on other streamlining pathways that applicants may want to consider.



## Are there any other streamlining pathways that may apply?

Yes. There are several other opportunities to facilitate Homekey Round 2 projects. The following list includes various streamlining options, but is not exhaustive; there may be other applicable options depending on the nature of the project. Applicants should consult with their staff, consultants, and legal counsel for appropriate advice in construing these statutory options and how (and whether) they may apply to their projects.

- SB 35 (2017): The streamlined ministerial approval process allowed under SB 35 is not a CEQA exemption but can help expedite certain affordable housing projects. The Department of Housing and Community Development has promulgated guidelines on this process (see Updated Streamlined Ministerial Approval Process (Government Code Section 65913.4) Guidelines at <https://www.hcd.ca.gov/> >.
- SB 450 (2019): SB 450 introduced a statutory exemption from CEQA for qualifying interim motel housing projects that provide transitional and supportive housing and that do not (1) result in the expansion of more than 10 percent of the floor area of any individual living unit in the structure or (2) result in any significant effects relating to traffic, noise, air quality, or water quality. (Pub. Resources Code, § 21080.50.)
- AB 2162 (2018): This bill made supportive housing a use that is permitted by right in zones where multifamily and mixed-use development is already permitted. (Gov. Code, § 65583.)
- Executive Order N-32-20: This order suspends CEQA for projects using Homeless Housing, Assistance, and Prevention Program funds.

For a list of CEQA exemptions that could facilitate Homekey Round 2 projects, please see the Governor's Office of Planning and Research's **Technical Advisory on CEQA Review of Affordable, Transitional, Interim, and Permanent Supportive Housing Projects** at [https://opr.ca.gov/docs/20200715-PHK\\_TA.pdf](https://opr.ca.gov/docs/20200715-PHK_TA.pdf) >.

