

CEQA Exemption in AB 83 for Homekey Projects: Questions and Answers

AB 83 (2020) establishes a statutory exemption from the California Environmental Quality Act (CEQA) for activities funded by Homekey. (Health & Saf. Code, § 50675.1.2.) The CEQA exemption may apply when Homekey funds—which consists of \$550 million from the State's direct allocation of the federal Coronavirus Relief Fund (CRF) and \$50 million from the state General Fund—are used to provide housing for those who are impacted by the COVID-19 pandemic and experiencing homelessness or at risk of homelessness. (Health & Saf. Code, §§ 50675.1.1, 50675.1.2; Homekey Program 2020 Notice of Funding Availability (Homekey NOFA), sec. 100.)

This document provides the text of the CEQA exemption in AB 83, 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 particularly note the CEQA exemption's short deadlines. For this reason, project applicants and local permitting agencies should quickly determine the scope of all necessary project components and timely 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 83 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 ProjectHomekey@hcd.ca.gov.

Text of the CEQA Exemption in AB 83

Pursuant to AB 83, the following CEQA statutory exemption has been added to Health and Safety Code Section 50675.1.2:

(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 50675.1.1 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 rehabilitation, construction, or 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 rehabilitation, construction, or 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 rehabilitation, construction, or alteration work.
- (6) Any acquisition is paid for exclusively by 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 increase the original footprint of the project structure or structures by more than 10 percent. Any increase to the

footprint of the original project structure or structures shall be exclusively to support the 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 only apply to a project for which the initial application to the city, county, or city and county where the project is located was submitted on or before April 30, 2021.

(d) This section shall be repealed on July 1, 2021.

Which projects can use the exemption?

Projects that utilize money from Homekey funds, regardless of whether they also utilize other funding sources, may be eligible for the CEQA exemption. (Health & Saf. Code, § 50675.1.2.) The eligibility requirements for these funds are set out in the Homekey Program 2020 Notice of Funding Availability (Homekey NOFA) available at <https://www.hcd.ca.gov/>.

In addition to the CEQA exemption, AB 83 provides significant land-use streamlining for projects utilizing Homekey funds. This land use "exemption" is independent of the CEQA exemption and applies to all Homekey funded projects.

All Homekey projects are eligible for such streamlining and are "deemed consistent and in conformity with any applicable local plan, standard, or requirement, 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 to any other discretionary reviews or approvals." (Health

& Saf. Code, § 50675.1.1, subd. (g).) This means that any project using money from Homekey funds for any of the purposes listed in the Homekey 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 83 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:

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

(Health & Saf. Code, § 50675.1.2, 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:

- No units were acquired by eminent domain;
- Any acquisition is paid for exclusively by public funds; and
- 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, § 50675.1.2, subds. (a)(1), (a)(6), (a)(8).)

Acquisition-Plus and “Phased” Projects

Other projects proposing to use Homekey 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:

- No units were acquired by eminent domain;
- Any acquisition is paid for exclusively by public funds;
- 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 rehabilitation, construction, or alterations in accordance with Chapter 2.9 (commencing with Section 2600) of Part 1 of Division 2 of the Public Contract Code;
- The project proponent submits to the lead agency a letter of support from a county, city, or other local public entity for any rehabilitation, construction, or alteration work;
- 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
- The project does not increase the original footprint of the project structure or structures by more than 10 percent.

(Health & Saf. Code, § 50675.1.2, subds. (a)(1), (a)(2), (a)(4), (a)(5), (a)(6), (a)(8), (a)(9).)

Are there certain time restrictions related to the Coronavirus Relief Funds and the CEQA exemption to be aware of?

Yes. Because of the statutory deadlines and short turnaround times discussed below, project applicants and local permitting agencies should quickly determine the scope of all necessary project components and timely consider any associated approvals to maximize their use of the CEQA exemption.

AB 83 Time Restrictions

The CEQA exemption contains two important time restrictions:

- The exemption only applies to projects “for which the initial application to the city, county, or city and county where the project is located was submitted on or before April 30, 2021” and
- The exemption “will be repealed on July 1, 2021.”

(Health & Saf. Code, § 50675.1.2, subs. (c), (d).) However, as explained in the Homekey NOFA, the federal Coronavirus Relief Fund moneys must be spent (i.e., the property must be purchased) on or before December 30, 2020 (see the Homekey NOFA, sec. 100 for additional details). This means that, as a practical matter, **if a Homekey project’s “initial application” has not been submitted well before December 30, 2020, the CEQA exemption may not apply.**

Best Practices to Consider in Working Within Time Restrictions

Because of these time restrictions, an applicant could utilize the exemption for project acquisition before the end of 2020, but then **be unable to rely on the exemption for project rehabilitation, construction, or alteration if project applications are not timed and structured with the deadlines in mind.**

A recommended best practice for the applicant of a project that involves more than property acquisition would be to consider all of the necessary project approvals required for project completion **before or at the same time** as the approval for property acquisition using the Coronavirus Relief Funds.

Frontloading all proposed activities in the initial application, so that it includes not only approval for the acquisition but also approvals related to future actions and phases of any phased project, would be a best practice for capturing all phases of a project in a single approval. In this way, the CEQA exemption could be used to satisfy the local agency's CEQA obligations for all project components.

Examples

Scenario One: A proposed project could include building acquisition, rehabilitation of the structure, and minor construction to make it compliant with the Americans with Disabilities Act (42 U.S.C. § 12101, et seq.). The project applicant must obtain approval for building acquisition and acquire the building before December 30, 2020. (See Homekey NOFA, sec. 100 for details regarding funding expenditure requirements.) To ensure that all project components (i.e., acquisition, rehabilitation, and construction) could be covered under the CEQA exemption, the applicant should include all components in its application and, where possible, obtain approval for all project components at the same time so as to maximize use of the exemption. All of this must be done with sufficient time before the end of 2020 so that the building can be acquired before December 30, 2020.

Scenario Two: If an acquisition-plus or phased project requires multiple local agencies' approvals (such as where one agency approves acquisition, and another approves permitting for rehabilitation), a best practice would be to initiate applications in all governing jurisdictions at the same time. In some instances, however, a local agency with responsibility for permitting rehabilitation may not accept an application until the applicant owns the property. In such a case, a best practice would be to have the application for rehabilitation ready for filing and file it as soon as acquisition is accomplished to facilitate approval before July 1, 2021, when the CEQA exemption is repealed. (Health & Saf. Code, § 50675.1.2, subd. (d).)

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 or structures on site, but only if such expansion does not increase the total project footprint by more than 10 percent. (Health & Saf. Code, § 50675.1.2, 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, § 50675.1.2, 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 (42 U.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, § 50675.1.2, 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 50675.1.2 provide an exemption to the National Environmental Policy Act (NEPA)?

No. The exemption in section 50675.1.2 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 projects have to utilize the CEQA exemption?

No. While the Legislature contemplated that many Homekey projects will rely on the CEQA exemption contained in Health and Safety Code section 50675.1.2, 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 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 Streamlined Ministerial Approval Process (Chapter 366, Statutes of 2017) Guidelines at < <https://www.hcd.ca.gov/> >. Updated guidelines are anticipated in late Summer 2020.
- 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 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 >.