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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF MARIN

Case No. CIV 2200788

11 **SOUTH ELISEO NEIGHBORHOOD**
ALLIANCE, DIANA HEDRICK and
12 **MARK SCHULMAN,**

13 *Petitioners,*

14 v.

15 **MARIN COUNTY COMMUNITY**
DEVELOPMENT AGENCY and
16 **MARIN COUNTY BOARD OF**
SUPERVISORS,

17 *Respondents,*

18 **EPISCOPAL COMMUNITY**
SERVICES OF SAN FRANCISCO,

19 *Real Party in Interest.*
20

**BRIEF OF THE CALIFORNIA ATTORNEY
GENERAL AS AMICUS CURIAE IN
SUPPORT OF RESPONDENTS**

Date: October 18, 2022
Time: 1:30 PM
Dep't: A
Judge: Hon. Stephan P. Freccero
Complaint Filed: March 23, 2022

21 **INTRODUCTION AND INTERESTS OF AMICUS CURIAE**

22 The State of California has a significant interest in the proper interpretation and
23 application of the provisions of California law at issue in this case, and in ensuring that funds
24 awarded by the State are used as intended. The Attorney General submits this brief as amicus
25 curiae to vindicate those interests.¹ The Homekey Program is a multi-billion dollar statewide
26 initiative to expand urgently needed housing for people experiencing homelessness. It

27 ¹ Cf. Cal. Rules of Ct., rule 8.200(c)(7) (permitting Attorney General to file amicus curiae brief
28 as of right in Court of Appeal).

1 accomplishes this goal by providing funding to local public entities and their private sector
2 partners to acquire, rehabilitate, and convert existing residential and commercial properties into
3 permanent or interim housing. The legislation creating the Homekey Program (1) included an
4 express statutory exemption from the California Environmental Quality Act (CEQA) review
5 process, and (2) excluded Homekey Program developments from the requirements of article
6 XXXIV, section 1 of the California Constitution (Article 34). Petitioners' arguments are
7 contrary to the Legislature's intent in enacting the Homekey Program and would impede the
8 State's ability to effectively address the basic needs of hundreds of thousands of Californians
9 facing homelessness, including the highly vulnerable people with disabilities who would be
10 housed in the Larkspur development at issue here.

11 Petitioners argue that Health and Safety Code section 50675.1.4's CEQA exemption for
12 the Homekey Program does not apply to the Larkspur development because it is designed to
13 house individuals, not individuals *and* families. Petitioners also argue that because the property
14 being converted to a Homekey development is a former skilled nursing facility—which, they
15 contend, is not a dwelling unit or lodging facility—the development does not fall within the
16 Article 34 exclusion and should therefore be subject to local voter approval requirements.

17 Petitioners are incorrect. The Legislature intended Homekey Program developments
18 designed for individuals—who are a majority of those experiencing homelessness—to be
19 exempt from CEQA review. Further, the Legislature intended that the statutory exclusion of
20 Homekey Program projects from Article 34 requirements include all types of properties that are
21 rehabilitated or otherwise converted into dwelling units. The Court should reject Petitioners'
22 erroneous arguments.

23 DISCUSSION

24 **I. The Homekey Program Was Enacted to Rapidly Expand Housing for Homeless** 25 **People in Response to Acute Crises in California.**

26 When the Legislature enacted the statutes creating the Homekey Program, California
27 was facing a growing homelessness crisis. In January 2020, 161,000 Californians were
28

1 experiencing homelessness.² From 2019 to 2020, California had the largest absolute increase in
2 homelessness and accounted for more than half of all unsheltered people in the United States;³
3 the homeless count rose in California by 42 percent between 2014 and 2020, while the rest of
4 the country saw a 9 percent decrease.⁴

5 Because of the demographics of those experiencing homelessness, permanent supportive
6 housing developments directed at individuals, such as the Larkspur development here, are
7 essential to a successful response to homelessness. Adults who are not living with children
8 make up 77 percent of the people experiencing homelessness in California.⁵ Of the more than
9 248,000 people who accessed homelessness services in 2020, 41 percent reported disabling
10 conditions,⁶ and mental illness is particularly prevalent:

11 Adults with severe mental illness constitute one of the largest subpopulations of
12 homeless communities. The Treatment Advocacy Center estimated in 2016 that as
13 many as 30 percent of people experiencing homelessness nationwide have serious
14 mental illnesses, and a more recent study conducted by the L.A. Times found that
over 50 percent of those experiencing homelessness in Los Angeles County may be
experiencing symptoms of a mental disorder.⁷

15 Facing the urgent and intersecting issues of homelessness and the COVID-19 pandemic,
16 the Legislature passed Assembly Bill 83 in 2020 (AB 83). That bill created the Homekey
17 Program, which invested in long-term solutions to homelessness such as permanent housing and
18

19 _____
20 ² U.S. Dep’t of Housing and Urban Devel., *The 2020 Annual Homelessness Assessment Report*
21 *(AHAR) to Congress* (2021) <[https://www.huduser.gov/portal/sites/default/files/pdf/2020-](https://www.huduser.gov/portal/sites/default/files/pdf/2020-AHAR-Part-1.pdf)
[AHAR-Part-1.pdf](https://www.huduser.gov/portal/sites/default/files/pdf/2020-AHAR-Part-1.pdf)> (as of Sept. 22, 2022).

22 ³ *Ibid.*

23 ⁴ Streeter, *Homelessness in California: Causes and Policy Considerations* (May 2022) Stanford
24 Inst. for Econ. Pol’y Res. <[https://siepr.stanford.edu/publications/policy-brief/homelessness-](https://siepr.stanford.edu/publications/policy-brief/homelessness-california-causes-and-policy-considerations)
[california-causes-and-policy-considerations](https://siepr.stanford.edu/publications/policy-brief/homelessness-california-causes-and-policy-considerations)> (as of Sept. 22, 2022).

25 ⁵ Davalos and Kimberlin, *Who is Experiencing Homelessness in California?* (Feb. 2022)
26 <<https://calbudgetcenter.org/resources/who-is-experiencing-homelessness-in-california>> (as of
Sept. 22, 2022).

27 ⁶ *Ibid.*

28 ⁷ Novasky & Rosales, *Mental Health and Homelessness in the Wake of Covid-19: The Path to*
Supportive and Affordable Housing (2020) 68 UCLA L. Rev. Discourse 130, 132.

1 relevant social services.⁸ Homekey Program funding has exceeded \$3.75 billion for more than
2 200 projects statewide, creating 12,500 homes for people experiencing homelessness.⁹

3 About a year later, in 2021, the Governor signed Assembly Bill 140 (AB 140), which
4 provided the statutory basis for Round 2 of the Homekey Program at Health and Safety Code
5 sections 50675.1.3 and 50675.1.4 (Homekey Round 2). Homekey Round 2 allowed for funds
6 appropriated to provide housing for homeless individuals and families to be disbursed for the
7 “[a]cquisition or rehabilitation, or acquisition and rehabilitation, of motels, hotels, hostels, or
8 other sites and assets, including apartments or homes, adult residential facilities, residential care
9 facilities for the elderly, manufactured housing, commercial properties, and other buildings with
10 existing uses that could be converted to permanent or interim housing.” (Health & Saf. Code, §
11 50675.1.3, subd. (b)(1).) Projects funded pursuant to Homekey Round 2 were exempted from
12 the CEQA review process so long as they met specified and applicable criteria. (Health & Saf.
13 Code, § 50675.1.4.) The Larkspur project was funded under Homekey Round 2.

14 **II. The Legislature Intended Homekey Program Developments that Provide**
15 **Housing Only for Homeless Individuals to Be Exempt from the CEQA Review**
16 **Process.**

17 By enacting Health and Safety Code § 50675.1.4, the Legislature decided to avoid the
18 burdens of environmental review for this class of projects. (See *Sunset Sky Ranch Pilots Assn.*
19 *v. County of Sacramento* (2009) 47 Cal.4th 902, 909; see also *May v. City of Milpitas* (2013)
20 217 Cal.App.4th 1307, 1321 (listing “[s]tatutes other than CEQA [that] also provide statutory
21 exemptions to CEQA’s requirements”).) The Legislature may choose to partially or wholly
22 exempt projects and activities from CEQA review. (See *N. Coast Rivers Alliance v. Westlands*
23

24
25 ⁸ Legis. Counsel’s Dig., Assem. Bill No. 83 (2019-2020 Reg. Sess.) Summary Dig., pp. 23–25.

26 ⁹ Off. of Gov. Gavin Newsom, *In Los Angeles, Governor Newsom Announces \$694 Million in*
27 *Homekey Awards to Create More than [1]2,500 New Homeless Housing Units Statewide* (Aug.
28 24, 2022) <<https://www.gov.ca.gov/2022/08/24/in-los-angeles-governor-newsom-announces-694-million-in-homekey-awards-to-create-more-than-2500-new-homeless-housing-units-statewide/>> (as of Sept. 28, 2022).

1 *Water Dist.* (2014) 227 Cal.App.4th 832, 850.) In such cases, the sole question is a matter of
2 statutory interpretation, to determine the availability (or scope) of the exemption. (See *Covina*
3 *Residents for Responsible Development v. City of Covina* (2018) 21 Cal.App.5th 712, 724.)

4 Here, for a Homekey Program development to qualify for the statutory CEQA
5 exemption, one requirement is that it “provides housing units for individuals and families who
6 are experiencing homelessness or who are at risk of homelessness.” (Health & Saf. Code, §
7 50675.1.4, subd. (a)(7).) Petitioners argue that the language of this exemption requires a project
8 to provide housing for *both* “individuals and families.” They argue that it therefore does not
9 apply to the Larkspur permanent supportive housing project at issue here, because that project is
10 dedicated to housing for single adults with disabilities, not families. (Pet. Op. Br. p. 12.)

11 Petitioners are wrong. As Respondents note in their brief, “individuals and families who
12 are experiencing homelessness or who are at risk of homelessness” is a defined term in Health
13 and Safety Code section 50675.1.3, the provision that specifies uses and priorities for allocation
14 of Homekey Program funds. (Resp. Opp. Br. pp. 7-8; Health & Saf. Code, § 50675.1.3, subd.
15 (l)). The statutory definition incorporates a federal regulation that repeatedly employs the
16 phrase “individual or family” in its definitions of “homeless” and “at risk of homelessness.”
17 (*Ibid.*; 24 C.F.R. § 578.3.) Section 50675.1.4 provides a CEQA exemption for projects “funded
18 pursuant to Section 50675.1.3,” and nothing suggests that the Legislature intended “individuals
19 and families who are experiencing homelessness or who are at risk of homelessness” to have a
20 different meaning in section 50675.1.4 than it does in section 50675.1.3. (See *People v. Jones*
21 (1988) 46 Cal.3d 585, 595 [“It is presumed, in the absence of anything in the statute to the
22 contrary, that a repeated phrase or word in a statute is used in the same sense throughout”
23 (cleaned up)].) The Court must follow the unambiguous statutory definition. And as
24 Respondents also convincingly demonstrate, the legislative history of the Homekey Program
25 confirms that the Legislature was focused on aiding homeless individuals, not solely families.
26 (Resp. Opp. Br. p. 8.)

27 Petitioners’ argument rests solely on the word “and” in isolation. But courts recognize
28 that in everyday language, the word “and” is often used as a “careless substitute” for the word

1 “or.” (*People v. Horn* (1984) 158 Cal.App.3d 1014, 1028.) “Consequently the word ‘and’ may
2 sometimes be interpreted as ‘or’ to carry out the intention of the Legislature in drafting a
3 statute” (*ibid.* [cleaned up]), which is the “fundamental task” of statutory interpretation.
4 (*People v. Murphy* (2001) 25 Cal.4th 136, 142.) Courts do not consider statutory language in
5 isolation. Instead, they “look to the entire substance of the statute,” construing the words “in
6 context, keeping in mind the nature and obvious purpose of the statute.” (*Ibid.* [cleaned up].)

7 Here, it is clear that the Legislature did not intend to limit CEQA exemptions under
8 section 50675.1.4 solely to projects that provide housing for both individuals and families
9 simultaneously. First, the overall purpose of the Homekey Program is to provide housing for
10 people experiencing, or at risk of, homelessness. As discussed above, a significant majority of
11 that population is individuals,¹⁰ many with disabilities,¹¹ and nothing in the statute suggests that
12 the Legislature intended to give the smaller group of families experiencing homelessness special
13 preference over individuals. An interpretation excluding projects dedicated to the largest
14 segment of the homeless population from the exemption would be inconsistent with the statute’s
15 purpose to speed the development of housing for people experiencing homelessness by
16 exempting qualified Homekey Program-funded projects from CEQA.

17 The larger statutory context confirms this interpretation. Since section 50675.1.3 uses
18 the phrase “individuals and families who are experiencing homelessness or who are at risk of
19 homelessness” to describe Homekey Program funds, accepting Petitioners’ construction of
20 “individuals and families” would not only exclude projects dedicated to single individuals from
21 the CEQA exemption, it would throw into question their eligibility for Homekey Program
22 funding entirely. This demonstrates still further the fundamental inconsistency of Petitioners’
23 interpretation with the Legislature’s intent to benefit the entire population of people
24 experiencing homelessness.

25
26 ¹⁰ In January 2020, 70 percent of California’s homeless population were individuals. See *2020*
27 *AHAR*, *supra* note 2.

28 ¹¹ Of the Californians who accessed homeless services in 2020, 41 percent reported disabilities.
See *2022 Who is Experiencing Homelessness in California?*, *supra* note 5.

1 Another provision of AB 140 provides yet more support for this reading. The Homekey
2 Program sets aside 8 percent of funds for “projects serving homeless youth, or youth at risk of
3 homelessness.” (Health & Saf. Code, § 50675.1.3, subd. (c).) Since homeless youth are
4 understood to be “unaccompanied minors ages 12 through 17 who are living apart from their
5 parents or legal guardians, and young adults ages 18 through 24 who are economically and/or
6 emotionally detached from their families,”¹² and thus living as individuals rather than in family
7 units, the Legislature’s set-aside of funds for projects specifically serving this group shows
8 further that it did not intend to exclude projects dedicated to housing for individuals from
9 Homekey Program funds, or from section 50675.1.4’s CEQA exemption.

10 **III. The Legislature Intended that Homekey Program Developments Be Excluded**
11 **from Article 34’s Local Voter Approval Requirements.**

12 As Respondents argue, Petitioner’s Article 34 argument is barred by their failure to
13 exhaust their administrative remedies. (Resp. Opp. Br. p. 17.) But if the Court reaches the
14 substance of the argument, the requirements of Article 34 do not apply to the Larkspur project
15 because the Legislature included a statutory exclusion from Article 34 in AB 140—the same
16 legislation that established Homekey Round 2. (Health & Saf. Code, § 37001, subd. (h)(2), (5).)
17 This statutory provision was intended to exclude projects funded under Homekey Round 2, such
18 as the Larkspur project, from the application of Article 34. Any interpretation to the contrary
19 disregards the express language of the statute.

20 Article 34 requires local voter approval before a “low rent housing project” can be
21 “developed, constructed, or acquired” by a “state public body.” (Cal. Const., art. XXXIV, § 1.)
22 In 1976, the Legislature adopted the Public Housing Election Implementation Law (PHEIL)
23 (Health & Saf. Code, §§ 37000–37002), which clarified several provisions of Article 34; among
24 other things, these clarifications operate to exclude certain types of projects from Article 34.
25 (See *Cal. Housing Finance Agency v. Patitucci* (1978) 22 Cal.3d 171, 175 [deferring to
26 Legislature’s interpretation in the PHEIL that Article 34’s “low rent housing project” provision

27 ¹² Assem. Com. on Approps., Rep. on Sen. Bill 177 (2013-2014 Reg. Sess.) as amended Aug. 5,
28 2013 p. 2.

1 excluded certain types of development].)

2 In 2021 (and pursuant to AB 140), the Legislature amended Health and Safety Code
3 section 37001 to exclude developments from the application of Article 34 if they:

4 consist[] of the acquisition, rehabilitation, reconstruction, alterations work, new
5 construction, or any combination thereof, of lodging facilities or dwelling units using
6 ... the following: [¶] Moneys received from the Coronavirus State Fiscal Recovery
7 Fund established by the federal American Rescue Plan Act of 2021 (ARPA) (Public
8 Law 117-2) ... [¶] Moneys appropriated and disbursed to fund the uses and
9 accomplish the objectives specified in Section 50675.1.1 or 50675.1.3.

10 (Health & Saf. Code, § 37001, subd. (h)(2), (5).)¹³ Notably, “any combination” of the listed
11 development activities is allowed under this exclusion, so long as the development is a lodging
12 facility or dwelling unit that is funded with ARPA money (Health & Saf. Code, § 37001, subd.
13 (h)(2)), or uses moneys appropriated and disbursed to fund the uses and accomplish the
14 objectives specified in Section 50675.1.1 or 50675.1.3 (*id.*, § 37001, subd. (h)(5)).

15 Petitioners’ argument that the Larkspur project does not fall within this Article 34
16 statutory exclusion mistakenly assumes that the exclusion only applies based on the *former* use
17 of the property. According to Petitioners, because the project occupies the site of a former
18 skilled nursing facility, it does not involve the acquisition and rehabilitation of properties that
19 were *previously* lodging facilities or dwelling units, and thus does not fall within the scope of
20 section 37001, subdivision (h). (Pet. Op. Br. p. 22.)

21 Neither the statutory language nor the legislative history supports this cramped reading
22 of the statute. Here, the express language of the (h)(2) statutory exclusion applies to
23 developments, like the Larkspur project, comprised of lodging facilities or dwelling units that

24 _____
25 ¹³ Health and Safety Code section 50675.1.3 states that funds appropriated to provide housing for
26 those who are experiencing homelessness or who are at risk of homelessness, and who are
27 inherently impacted by or at increased risk for medical diseases or conditions due to the COVID-
28 19 pandemic or other communicable diseases, “shall be disbursed in accordance with the
Multifamily Housing Program” for the conversion of nonresidential to residential units, as well
as for the acquisition and/or rehabilitation of “motels, hotels, hostels, or other sites and assets,
including apartments or homes, adult residential facilities, residential care facilities for the
elderly, manufactured housing, commercial properties, and other buildings with existing uses
that could be converted to permanent or interim housing.” (Health & Saf. Code, § 50675.1.3,
subd. (a), (a)(1).)

1 are being newly constructed or reconstructed using ARPA funds.¹⁴ The Larkspur project
2 likewise falls within the Legislature's catch-all (h)(5) statutory exclusion because the
3 development comprises lodging facilities or dwelling units that are being constructed or
4 reconstructed using "[m]oneys appropriated and disbursed to fund the uses and accomplish the
5 objectives specified in Section 50675.1.1 or 50675.1.3." (Health & Saf. Code, § 37001, subd.
6 (h)(5).) As noted, section 50675.1.1 defines the scope of Homekey Round 1, while section
7 50675.1.3 defines the scope of Homekey Round 2. The effect of the (h)(5) exclusion is
8 therefore to exclude any permissible use under Homekey Rounds 1 and 2 from Article 34's
9 requirements. As a Homekey Round 2 project, the Larkspur project thus falls within the (h)(5)
10 statutory exclusion, regardless of the prior use of the property. As in the case with subdivision
11 (h)(2), the project site's former use as a skilled nursing facility is simply immaterial to the
12 question of Article 34 applicability.

13 For all these reasons, the Larkspur project does not constitute a low rent housing project
14 within the meaning of Article 34.

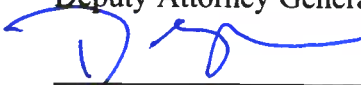
15 **IV. CONCLUSION**

16 The Petition for Writ of Mandamus should be denied.

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18 Dated: October 10, 2022

Respectfully submitted,

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¹⁴ Funding for Homekey Round 2 was derived almost entirely from ARPA funds.