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Deputy Clerk

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN MATEO

CITY OF MILLBRAE, a municipal corporation,

Plaintiff/Petitioner,

v.

COUNTY OF SAN MATEO; a public entity and political subdivision of the State of California; BOARD OF SUPERVISORS OF THE COUNTY OF SAN MATEO; ALL PERSONS INTERESTED IN THE MATTER OF SAN MATEO COUNTY RESOLUTION NO.____ DECLARING THE BOARD OF SUPERVISORS' INTENTION TO PURCHASE THE PROPERTY LOCATED AT 1390 EL CAMINO REAL, MILLBRAE (ASSESSOR PARCEL NUMBER 021-281-700) FOR PURPOSES OF CONVERTING THE LA QUINTA INN TO PUBLIC HOUSING; DOES 1 through 10, inclusive; and ROES 1 through 10, inclusive,

Defendants/Respondents.

Case No. 23-CIV-05426

NF

~~[PROPOSED]~~ JUDGMENT IN FAVOR OF DEFENDANT/RESPONDENT; DISMISSAL WITHOUT PREJUDICE

HONORABLE NANCY L. FINEMAN

On June 17, 2024, the Court dismissed without prejudice the action by Plaintiff/Petitioner CITY OF MILLBRAE ("City") against Defendant/Respondent COUNTY OF SAN MATEO; a public entity and political subdivision of the State of California; BOARD OF SUPERVISORS OF THE COUNTY OF SAN MATEO; ALL PERSONS INTERESTED IN THE MATTER OF SAN MATEO COUNTY RESOLUTION NO.____ DECLARING THE BOARD OF SUPERVISORS' INTENTION TO PURCHASE THE PROPERTY LOCATED AT 1390 EL CAMINO REAL, MILLBRAE (ASSESSOR PARCEL NUMBER 021-281-700) FOR PURPOSES OF CONVERTING THE LA QUINTA INN TO PUBLIC HOUSING; DOES 1 through 10, inclusive; and ROES 1 through 10, inclusive ("County").

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED:

Judgment is entered in favor of the County and against the City, in accordance with the Court's Final Statement of Decision in this matter, attached as Exhibit A. The action is dismissed without prejudice. The City shall take nothing by this action, and, pursuant to California Code of Civil Procedure 1032(b), the County and Interested Party Yes In My Back Yard may recover their costs. Nothing in this judgment precludes the parties from filing a motion for attorney's fees pursuant to statute.

Electronically
SIGNED
By /s/ Fineman, Nancy
07/18/2024

Dated: _____

THE HONORABLE NANCY L. FINEMAN

EXHIBIT

A

FILED
SAN MATEO COUNTY
JUN 17 2024
Clerk of the Superior Court
By Edward Isa
DEPUTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN MATEO

CITY OF MILLBRAE, a municipal corporation,

Plaintiff/Petitioner,

v.

COUNTY OF SAN MATEO; a public entity and political subdivision of the State of California; BOARD OF SUPERVISORS OF THE COUNTY OF SAN MATEO; ALL PERSONS INTERESTED IN THE MATTER OF SAN MATEO COUNTY RESOLUTION NO. ___ DECLARING THE BOARD OF SUPERVISORS' INTENTION TO PURCHASE THE PROPERTY LOCATED AT 1390 EL CAMINO REAL, MILLBRAE (ASSESSOR PARCEL NUMBER 021-281-700) FOR PURPOSES OF CONVERTING THE LA QUINTA INN TO PUBLIC HOUSING; DOES 1 through 10, inclusive; and ROES 1 through 10, inclusive,

Defendants/Respondents.

Case No. 23-CIV-05426

STATEMENT OF DECISION

Dept. 4

Honorable Nancy L. Fineman

Complaint Filed: Nov. 13, 2023
Trial Date: April 3, 2024

I. INTRODUCTION

This case arises out of the County of San Mateo's (County) decision to acquire property within the City of Millbrae (City) (the Property) for the declared purpose of developing the Property for low-income County residents. The City objects to the County's September 12, 2023 adoption of a resolution (Resolution) authorizing the Property's acquisition contending that Article 34 of the California Constitution (hereinafter Article 34 or Article XXXIV) first required the County to submit the acquisition of the Property to a vote of the City's qualified electorate for approval. The City seeks to invalidate the Resolution through this reverse validation action authorized by Health & Safety Code section 36003.

The parties raise a myriad of issues, but the court finds that although a validation action is the proper procedural vehicle to challenge the validity of a county's action (Health & Saf. Code, § 36003), the City failed to establish that a triggering event has occurred and thus the lawsuit is not ripe. (*Id.*, § 36005 (§ 36005) ["no judicial action . .. shall be brought..."]; *Davis v. City of Berkeley* (1990) 51 Cal.3d 227, 242, fn. 8 (*Davis*).) Since the resolution of this issue does not depend on whether the City has standing, whether Article 34 requires the City's citizens to vote on the County's acquisition of the Property, or whether Health & Safety Code section 37001, subdivision (h)(5) is constitutional, the court does not decide these other issues.

II. PROCEDURAL HISTORY

On November 13, 2023, the City filed its Complaint for Validation and Petition for Writ of Mandate. A validation action is entitled to preference on the court's calendar (Code of Civ. Proc., 867) and the court has moved this action towards resolution as quickly as possible. The complaint's first cause of action (the Validation Action) was brought pursuant to Health & Safety Code section 36003 and Code of Civil Procedure section 860 *et seq.* to challenge the validity of the Resolution. The complaint's second cause of action, brought pursuant to Code of Civil Procedure section 1085, was for writ of mandate and sought rescission of the Resolution, its third cause of action was for declaratory relief, and its fourth cause of action was for injunctive relief.

On November 29, 2023, the City filed an Application For Order Designating Newspaper for Publication of Summons, in order to fulfill the City's obligation under Code of Civil

Procedure, section 861, requiring publication of the Summons in a newspaper of general circulation designated by the court. On December 4, 2023, this court approved the City's application and ordered that the City publish the Summons in the *San Mateo Daily Journal* in conformance with Code of Civil Procedure section 861. The City did so. The published Summons identified January 8, 2024, as the date upon which "any party interested" may appear and contest the legality or validity of the Resolution. The City and the County also stipulated to extend to January 8, 2024 the County's deadline to file a responsive pleading.

On January 8, 2024, the County filed a demurrer to the second, third and fourth causes of action, on grounds that where a validation action may be brought, no other claims or remedies may also be brought. At the hearing on February 13, 2024, the court sustained the County's demurrer.

On January 8, 2024, "Yes In My Back Yard" (YIMBY) filed an answer to the complaint as a "person interested in the matter" pursuant to Code of Civil Procedure, section 861.

On January 16, 2024, the City filed an *ex parte* application for a temporary restraining order and order to show cause as to why a preliminary injunction should not issue. Specifically, the City sought to enjoin the County from closing escrow on the property at issue and beginning construction of its permanent rental housing project on the property until the merits of this case were heard and adjudicated. On January 31, 2024, this court denied the City any injunction, on grounds that when a plaintiff brings a validation action, the plaintiff cannot also obtain injunctive relief against a party to the action. Based upon the parties' request, the court set a trial date of March 13, 2024.

On March 1, 2024, attorneys for the California Department of Housing and Community Development (HCD) filed an *ex parte* application for leave to file an amicus curiae brief in support of the County. This court granted HCD leave to file an amicus curiae brief, and; at the City's request changed the scheduled merits hearing from March 13, 2024, to April 3, 2024 to provide the City sufficient time to oppose HCD's position.

On April 3, 2024, the City's Validation Action came on for hearing in Department 4 of the above-entitled court, the Honorable Nancy L. Fineman, presiding. The City, the County,

YIMBY, and HCD as amicus curiae, appeared through their counsel of record, as stated on the record. Following consideration of the evidence submitted, together with the briefing and arguments of counsel, the court took the matter under submission and did not issue any tentative decision.

The City timely requested a statement of decision at the trial. In all its court trials, the court discusses with counsel whether they want to follow the procedural requirements in California Rules of Court, rule 3.1590, which create a briefing schedule spanning multiple months before a final statement of decision is issued, or whether they want to stipulate to a different schedule. In this case, the court and the parties agreed to an abbreviated schedule, which meant that a final statement of decision would be issued earlier than if the deadlines set forth in Rule 3.1590 had been followed. The court did not mean to create any impression in its tentative decision that the City had not requested a statement of decision, that the court would not be issuing a statement of decision, or that any party waived any protections or benefits of a statement of decision. The court's only concern was to have a decision issued as quickly as possible and to agree upon the specific deadlines for the court and the parties. If the City, or any other party, believes it has suffered any prejudice from this process, it shall file, serve, and email a courtesy copy of a brief to Department 4 by June 24, 2024, setting forth the prejudice and requested relief.

All parties, pursuant to the stipulation, filed timely proposed statements of decisions, responses to the other parties' proposed statements, and the County filed an opposition to the City's revised statement of decision. The court read and considered all the briefing filed by the parties before issuing its proposed statement of decision. On May 23, 2024, the court filed and served its proposed statement of decision. On June 6, 2024, the City timely filed objections, consisting of nineteen objections in fourteen pages of briefing. No other parties filed objections to the court's tentative decision. The court has reviewed the City's objections and made certain revisions before issuing this statement of decision.

III. EXHIBITS AND EVIDENCE

Stipulated Exhibits

On March 4, 2024, the City, the County, and YIMBY (together, the Parties) jointly filed a Stipulation of Undisputed Facts and Authenticated Exhibits. The filing included 36 exhibits that the Parties stipulated were authentic. The court admitted those exhibits into evidence at trial. [1]

TRO/PI Declarations

In connection with their papers on the temporary restraining order and preliminary injunction, the City and the County filed several declarations with attached exhibits. The City requests that the court consider these documents. If the declarations or attached exhibits were not admitted into evidence at trial, then the court has not considered them. The court did not perform a cross-check of the evidence admitted at trial to see if they were also submitted for the temporary restraining order and preliminary injunction order.

Requests for Judicial Notice

Both the City and HCD have filed Requests for Judicial Notice. On February 20, 2024, the City filed with its Opening Brief a Request for Judicial Notice seeking judicial notice of a City of Millbrae Memorandum prepared by the City Finance Director (Millbrae 2/20/24 RJN). On March 5, 2024, HCD filed with its Amicus Curiae Brief, a Request for Judicial Notice seeking notice of 12 exhibits, including a press release from the Office of Governor Gavin Newsom, various federal and state reports and guidance documents, and other State publications (HCD 3/5/24 RJN). On March 22, 2024, the City filed with its Opposition to Amicus Curiae Brief of HCD, a Request for Judicial Notice seeking notice of an HCD memorandum entitled "California Constitution Article XXXIV Guidance" (Millbrae 3/22/23 RJN).

The County opposed the City's February 20, 2024 request for judicial notice. No party opposed HCD's and the City's March 22, 2024 requests for judicial notice.

The court grants the unopposed request for judicial notice by HCD and the City's March 22, 2023 request for judicial notice. (Evid. Code, § 452, subd. (c).) The City's request for

[1] Citations to authenticated exhibits filed under the Parties' joint stipulation are in the following format: "Exhibit#:Bates#" such that bates numbered page 2 of Exhibit 1 would be cited as follows: "Exhibits Stip., 1:2."

judicial notice dated February 20, 2024, which is a memorandum from the City's Finance Director to the City Manager dated February 13, 2024, was written about the subject matter of this litigation after the litigation was filed. There is no foundation regarding any purpose of the memorandum except for this litigation. However, the document appears to satisfy the requirements of Evidence Code section 1280 and the court will take judicial notice of the document for the limited purpose of the fact that the City believes that it will lose revenue if the County purchases the property.

YIMBY Citations to Non-Legal Authority

On March 4, 2024, YIMBY filed its Response to Plaintiff City of Millbrae's Opening Brief. YIMBY's responsive brief quoted from the non-legal authorities, including Jane Jacobs, Dark Age Ahead (2004). The City objects to the quotations and citations on grounds they constitute hearsay, and are presented to contradict properly cited legal authority and legislative history materials. YIMBY counters that the book is judicially noticeable pursuant to Evidence Code, sections 452(h) and 1341, on grounds it is a historical work and offered to prove facts of general notoriety and interest. The court will not strike the quotations in YIMBY's brief, but considers them solely as the opinions of the authors and has not relied upon the authorities in making its decision.

Additional City Declarations

On April 2, 2024, the day prior to the merits hearing, the court through an email posed certain questions to the parties and invited them to submit any additional authority before 7:00 a.m. on April 3, 2024. In response, the City submitted the "Declaration of T. Williams re The Rollins Affordable Housing Project," and the "Declaration of Jennifer J. Lynch re Pending Demolition and Construction Permits." On the record at the April 3, 2024 merits hearing, the court asked whether the County or YIMBY objected to the City's two additional declarations. Both the County and YIMBY responded that they had no objection. Thus the court accepts these additional declarations as evidence.

IV. FACTUAL BACKGROUND

On June 13, 2023, the County Board of Supervisors (Board) adopted two resolutions authorizing County staff to complete and submit to HCD one or more applications for Homekey (also referred to as HomeKey) funding. (Exhibits Stip., 35:507-514, 36:515-522.) The City is not challenging these resolutions. (City's proposed statement of decision filed April 17, 2024 at p. 13.) These resolutions did not identify any specific property that was the subject of the Homekey application.

On September 12, 2023, the County Board held a public hearing to consider the Resolution,[2] which declared the County's intent to acquire the Property, located at 1390 El Camino Real within the City of Millbrae, for purposes of converting and developing it into permanent rental housing for low-income County residents. (Exhibits Stip., 1:1; 2:5-6.)

The Resolution describes the Property as "a 100-guest room hotel property built in 1988." (Exhibits Stip, 2:5.) The Resolution states that "the County has determined the Property should be converted to provide permanent rental housing to low-income County residents experiencing homelessness, and therefore desires to purchase the Property for that purpose." (*Ibid.*) The Resolution identifies a "total purchase price of $33,000,000" for the Property, but does not identify how the purchase price will be funded, does not commit any particular fund or source of funding to the acquisition, does not condition the acquisition on the receipt of any specific source of funding, and provides no specific details on the development of the Property. (*Ibid.*) The Resolution states that the acquisition purchase price is still "subject to approval of funding by the Board." (*Id.*, 2:6.) Further, there is no description of the specifics of how the hotel was to be converted into rental housing, whether the existing hotel would be demolished or renovated, how many units would be available for low rental housing, who would have eligibility for the units, or any other specifics. The Resolution only authorized the purchase of the property.

The Resolution mentions, but does not attach or incorporate by reference, a "Real Estate Purchase and Sale Agreement and Escrow Instructions" (PSA). (Exhibits Stip., 2:6.)

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[2] The Resolution was adopted without a number and the record does not indicate a number was subsequently assigned.

The Resolution "determined and ordered that the [County] Board of Supervisors does hereby declare its intention to purchase the Property, located at 1390 El Camino Real in Millbrae (Assessor Parcel Numbers 021-281-700[]) ("Property") for a total purchase price of $33,000,000, subject to approval of funding by the Board and authorization for the County Executive to execute the Certificate of Acceptance." (Exhibits Stip., 2:6.) The Resolution makes one reference to "Homekey funds" within its recitals, but only in reference to its invocation of one of two stated exemptions from environmental review.[3] (Exhibits Stip., 2:5-6.) There is no other mention of "HomeKey" in the Resolution. (*Ibid.*)

County staff's board memorandum, addressed to the Board and released to the public prior to the hearing, recommended that the Board adopt the Resolution. (Exhibits Stip., 1:1-4.) The board memorandum references "HomeKey" and "the HomeKey Program" but does not provide details, including a description of the program, how it is authorized, how it is funded, or how funds are awarded to local agencies. Under the heading, "BACKGROUND," the memorandum reads: "HomeKey has created an opportunity for local public agencies to purchase hotels, motels and other housing types in order to increase community capacity to respond to homelessness and shortage [sic] of extremely low and low-income units available." (Exhibits Stip., 1:1.)

The memorandum reads as follows in discussing the Property and the County's plans for developing the Property: "The Property located at 1390 El Camino Real in Millbrae, is conveniently located in the northern County, where we have limited placement options. It is in proximity to major transportation routes, commercial activities, and County service providers. Its existing structures are well-suited for modification to serve the County's purposes in providing long-term residential housing for families or seniors. The Property would therefore provide an excellent location for HomeKey funded long-term residences." (Exhibits Stip., 1:2.) The

[3] The Resolution reads: "Section 50675.1.4 of the California Health & Safety Code provides that the California Environmental Quality Act (CEQA) shall not apply to any project funded by HomeKey funds, and the acquisition of the Property is further exempt from CEQA as it can be seen with certainty that there is no possibility that the acquisition in question may have a significant effect on the environment." (Exhibits Stip., 2:6.)

memorandum does not provide any details about how the County intends to convert the property into residential housing.

Under the heading, "EQUITY IMPACT," the memorandum reads: "This project directly targets low income or extremely low-income families and/or seniors facing homelessness." (Exhibits Stip., 1:3.)

Because the board memorandum states that the County has applied for state funding, but not that the County has received any such funding, the board memorandum implies that at the time of the adoption of the Resolution, no state funding, and no HomeKey funding in particular, had been granted to the County for its acquisition or development of the Property. (Exhibits Stip., 1:3; see also *id.*, 6:87-89 [indicating no HomeKey funding had been awarded to the County as of February 15, 2024].) The Parties agree, as of the trial date, the State has not approved Homekey funding based upon any application for funds for the Property. There is no evidence that the State has approved any Homekey funds since trial.

On September 6, 2023, prior to the September 12, 2023 hearing to consider the Resolution, three members of the City of Millbrae City Council sent a letter to the Board, objecting to the acquisition and development of the Property because of the financial impact of the Project on the City. (Exhibits Stip., 4:22-25.)

At the close of the September 12, 2023 hearing, the Board adopted the Resolution. (Exhibits Stip., p. 1, ¶ 2.) Prior to adoption of the Resolution, the County did not place any acquisition, conversion, or development of any housing project on any ballot and thus has not obtained any type of referendum voter approval. (*Ibid.*) It appears that the County has been processing building permits, but the only evidence submitted by the City were the building permits without any explanation of how they could be obtained when there was no evidence in the record that the County had purchased the property. (Exhibits stip. 3:9.) The City failed to explain how the County could have purchased the property without receiving the Homekey funds.

V. STANDARD OF REVIEW

There is no uniform standard of review for validation actions brought pursuant to Code of Civil Procedure, section 860 *et seq.* The applicable standard of review depends upon the issues

being litigated. "The constitutionality of a statute is a question of law, which [the courts] review de novo." (*Vergara v. State of California* (2016) 246 Cal.App.4th 619, 642.) "De novo review is also the general standard of review when a mixed question of law and fact implicates constitutional rights." (*Ibid.*) "Mixed questions of law and fact arise when 'historical facts are admitted or established, the rule of law is undisputed, and the issue is whether the facts satisfy the [relevant] statutory [or constitutional] standard, or to put it another way, whether the rule of law as applied to the established facts is or is not violated.'" (*Ibid*, [citing *People v. Cromer* (2001) 24 Cal.4th 889, 894.].) The court has an obligation to "enforce the limitations that the California Constitution imposes upon legislative measures" and determine if such measures violate constitutional protections. (*Vergara v. State of California, supra*, 246 Cal.App.4th at 643.)

VI. ARTICLE 34 REQUIRES A VOTE BY QUALFIED ELECTORS FOR APPROVAL OF LOW-INCOME HOUSING

The California Constitution requires "referendum approval in the affected community before a 'low rent housing project' can be developed, constructed, or acquired." (*California Housing Finance Agency v. Patitucci* (1978) 22 Cal.3d 171, 175 (*Patitucci*).) In 1950, California voters adopted, by way of initiative, Article 34 of the California Constitution. Article 34 reads:

> SECTION 1. No low rent housing project shall hereafter be developed, constructed, or acquired in any manner by any state public body until, a majority of the qualified electors of the city, town or county, as the case may be, in which it is proposed to develop, construct, or acquire the same, voting upon such issue, approve such project by voting in favor thereof at an election to be held for that purpose, or at any general or special election.
>
> For the purposes of this Article the term "low rent housing project" shall mean any development composed of urban or rural dwellings, apartments or other living accommodations for persons of low income, financed in whole or in part by the Federal Government or a state public body or to which the Federal Government or a state public body extends assistance by supplying all or a part of the labor, by guaranteeing the payment of liens, or otherwise. For the purposes of this Article only there shall be excluded from the term "low rent housing project" any such project where there shall be in existence on the effective date hereof, a contract for financial assistance between any state public body and the Federal Government in respect to such project.

> SECTION 2. The provisions of this Article shall be self-executing but legislation not in conflict herewith may be added to facilitate its operation.

(Cal. Const., art. 34, §§ 1, 2.) There have been several unsuccessful attempts to repeal Article 34.

Voter approval should be obtained before an application is submitted. "Both section 36003, which authorizes the bringing of a 'validation action,' and section 36005, which prescribes the time limit for prosecuting such an action, make clear the Legislature's view that the voter approval of low-rent housing required by article XXXIV may and should be obtained before the local entity's preliminary approval of the submission of the nonspecific 'application' by which the procedure for obtaining federal funding is initiated. In other words, the Legislature anticipated that a local entity would proceed [by] . . . seeking and obtaining general voter approval for the development of a designated number of low-rent housing units before going forward to the application stage." (*Davis*, *supra*, 51 Cal.3d at p. 242.)

In 1976, the California Legislature enacted the Public Housing Election Implementation Law (PHEIL). (Health & Saf. Code, § 36000 *et seq.*)[4] The PHEIL clarified that certain "forms of cooperation with the private sector, such as leased housing, disposition of real property acquired through redevelopment, rehabilitation assistance . . . may involve close participation with the private sector in meeting housing needs, without amounting to the development, construction, or acquisition of low-rent housing projects as contemplated in Article XXXIV." (*Id.*, § 36000.) The PHEIL clarified that specific forms of public assistance to private housing developers did not constitute a public agency's development, construction, or acquisition of a low-income housing project, and thus did not require prior referendum approval by the voters. (*Id.*, § 37001.)

In 2021, the Legislature enacted Assembly Bill 140, which added two subsections to Health & Safety Code section 37001(h) providing that "low rent housing project" does not

[4] The legislative history for this legislation is not on Westlaw (the only legal database to which this court has access) and the California Legislature Information site does not have information on bills prior to the 1999-2000 session, and section 36005 was enacted in 1976 and last amended in 1993. (https://leginfo.legislature.ca.gov/faces/home.xhtml.) The court found a summary digest of AB 4473 at https://clerk.assembly.ca.gov/sites/clerk.assembly.ca.gov/files/archive/Statutes/1976/76Vol4_Summary.pdf

include developments that receive funding from the "Coronavirus State Fiscal Recovery Fund established by the federal American Rescue Plan Act of 2021 (ARPA)" (then codified at Section 37001(h)(2)), nor does it include projects receiving funds relating to "the objectives specified in Section 50675.1.1 or 50675.1.3," which is the statutory authority underlying Project Homekey (then codified at Section 37001 subdivision (h)(5)). (Exhibits Stip., 33:489.) These provisions went into effect on July 21, 2021, and were in effect at the time the County adopted the Resolution at issue in this case.[5]

The parties' argument and briefing focus on whether Article 34 required the citizens of Millbrae to vote on the County's actions and whether the relevant version of Health & Safety Code 37001 subdivision (h) is constitutional. The issue of whether Article 34 requires the City's electorate to vote on the acquisition of the Property is a different issue of whether this lawsuit is ripe for adjudication. The court does not resolve the constitutional issues because, whether or not a vote is required, the lawsuit is not ripe for determination. Since there is no evidence in the record regarding the specifics of the development of the Property, it would be speculative of the court to determine facts necessary to determine other issues raised by the parties, *e.g.*, whether the County will receive the Homekey funds, whether the County will proceed with converting the property if it does not receive the Homekey funds, the specific plans to convert the property if it does receive Homekey funds or has other funds to convert the property, the design of the property, whether there will be private development involvement in the conversion, the specifics of who will live in the property. (*Wilson & Wilson v. City Council of Redwood City* (2011) 191 Cal.App.4th 1559, 1573 [if case not ripe, court will not issue an advisory opinion]; *Redevelopment Agency v. Shepard* (1977) 75 Cal.App.3d 453, 462 (*Shepard*) [no requirement for Article 34 referendum when speculation regarding the extent the residents would be persons of low income].]) The only evidence in the record is that the County intends (or perhaps has purchased the property) to use it for low-income rental housing, and apparently has taken out some building permits (the record only contains reference to the permits but not the specifics).

[5] In 2023, the Legislature enacted Senate Bill 469 which went into effect on January 1, 2024, further revising Section 37001(h) to provide that a number of state housing programs, including Homekey, are not low-rent housing projects within the meaning of Article 34.

VII. THE PROCEDURE TO BRING A VALIDATION ACTIONS

Article 34 does not provide a framework for a public entity to seek validation of its actions, or for interested persons to challenge a public entity's actions when no vote is held for an Article 34 project. In other words, Article 34 does not provide the steps that a party must take to obtain a ruling that the public entity needed to have a vote, nor does it provide when that challenge could be made. The Legislature, in 1976 as part of PHEIL, enacted the procedural framework, including identifying the validation action as the proper procedural mechanism, identifying the events which trigger the time to bring an action, and setting a short-time frame in which to bring the action. The validation procedure is the only action that can be filed to challenge the lack of a vote required pursuant to Article 34. "Moreover, when the validation statutes apply, they supersede other mechanisms by which an interested private party might seek to challenge the same agency matter. This preclusion of alternative remedies is necessary if the validation statutes are to serve their purpose of once and for all determining the validity of the agency matter." (*Davis v. Fresno Unified School Dist.* (2023) 14 Cal.5th 671, 685.)

A. A Validation Action Is the Proper Procedure for an Article 34 Challenge

Health & Safety Code section 36003 is entitled "Validation Actions; Law Governing" and authorizes the filing of a validation action to obtain approval or challenge an action pursuant to Article 34. Section 36003 provides:

> An action may be brought pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure to determine the validity of the action of a state agency or local public entity in giving preliminary or final approval to a proposal or application which may result in housing assistance benefiting persons of low income without obtaining prior referendum approval pursuant to Article XXXIV of the California Constitution.

Code of Civil Procedure section 860 *et seq.* are the statutes pertaining to a validation action. Under Code of Civil Procedure, section 860, a public agency may obtain a judgment upholding its own handling of an agency matter. (*Davis v. Fresno Unified School District, supra*, 14 Cal.5th at p. 684.) Under Code of Civil Procedure, section 863, "any interested person" may also bring an action within the time and in the court specified in section 860 to determine the

validity of a public agency matter. (*Id.* at p. 685.) Actions brought under section 863 are sometimes called "reverse" or "inverse" validation actions. (*Ibid.*; *City of San Buenaventura v. United Water Conservation Dist.* (2017) 3 Cal.5th 1191, 1201 as modified on denial of reh'g (Feb. 21, 2018).) The Validation Statutes do not themselves authorize validation actions or reverse validation actions; instead they establish a uniform system that other statutory schemes must activate by reference. (*Davis v. Fresno Unified School District, supra*, 14 Cal. 5th at p. 684.) If no statute authorizes use of the Validation Statutes to test a particular type of agency matter, then the Validation Statutes do not apply. (*Id.* at p. 685.)

No party has challenged the right of the City to bring a validation action. The fact, however, that the City has the statutory authority to bring a validation action does not mean that the City has met all the procedural requirements of a validation action.

B. Plaintiff Must Serve a Summons on All Interested Parties

The Validation Statutes statutorily prescribe the form of the summons and the manner of service in a validation action. (Code Civ. Proc., §§ 861, 861.1, 862.) Code of Civil Procedure section 861 provides "Jurisdiction of all interested parties may be had by publication of summons pursuant to Section 6063 of the Government Code in a newspaper of general circulation designated by the court . . . ." Code of Civil Procedure section 861.1 provides: "The summons shall be directed to 'all persons interested in the matter of [specifying the matter].' And shall contain a notice to all persons interested in the matter that they may contest the legality or validity of the matter by appearing and filing a written answer to the complaint not later than the date specified in the summons, which date shall be 10 or more days after the completion of publication of the summons." Code of Civil Procedure section 862 provides: "Jurisdiction shall be complete after the date specified in the summons. Any party interested may, not later than the date specified in the summons, appear and contest the legality or validity of the matter sought to be determined."

On December 4, 2023, the court approved the City's proposed Summons and ordered the City to provide notice of the Summons by publishing it in the *San Mateo Daily Journal* in conformance with Code of Civil Procedure section 861. This court further ordered that,

"[s]ubject to proper completion of notice by publication in the *San Mateo Daily Journal*, no additional notice of the pendency of the proceeding by mail or other means is required pursuant to Code of Civil Procedure, section 861." (Order Re Plaintiff/Petition City of Millbrae's Application for Order Designating Newspaper for Publication of Summons, Approving Summons for Publication in Conformance with Code Civ. Proc. § 861, filed 12/4/23.) The City filed an Affidavit of Publication on January 4, 2024, showing its conformance with this court's order from December 4, 2023.

The court finds, and no party has disputed, that the City fulfilled the notice and service requirements of Code of Civil Procedure section 861. Under Code of Civil Procedure section 862, this court determines it has jurisdiction over all interested parties.

C. The Validation Statutes Set Forth the Time to File a Validation or Reverse Validation Action

The trigger events and time limits for the validation or reverse validation action are set forth in section 36005 and Code of Civil Procedure sections 860 and 863. Section 36005 is entitled "Judicial action challenging final approval of proposal or application possibly resulting in housing assistance for low income persons" and provides:

> **No judicial action** attacking or otherwise questioning the validity of the action of a state agency or a local public entity in giving final approval to a **proposal** or **application** which may result in housing assistance benefiting persons of low income without obtaining prior approval pursuant to Article XXXIV of the California Constitution **shall be brought prior to** the notice of funding commitment by the state agency or the adoption of a resolution **or** ordinance by the legislative body of the local public entity approving the proposal **or** application, nor may any such action be brought at any time after 60 days from the date of the notice of funding commitment or the date of adoption of the ordinance or resolution approving the proposal, as appropriate. (Emphasis added).

Notably, the language of section 36005 uses the terms "application" and "proposal," terms that are not included in the language of Article 34, which provides: "No low rent housing project shall hereafter be developed, constructed, or acquired in any manner" until there is a vote.

Code of Civil Procedure section 860 provides a 60-day statute of limitations for bringing a validation action. (*Coachella Valley Water District v. Superior Court of Riverside County* (2021)

61 Cal.App.5th 755, 767 ["If the validation statutes apply, the validation (or inverse validation) complaint must be filed within 60 days of the act to be challenged."]; *id.*at p. 768 ["all matters which have been or which *could have been* adjudicated in a validation action, . . . including constitutional challenges, must be raised within the statutory limitations period in section 860 et seq. *or they are waived.*"].)

Code of Civil Procedure section 863 also imposes a 60-day statute of limitations for reverse validation actions. (*Golden Gate Hill Development Co., Inc. v. County of Alameda* (2015) 242 Cal.App.4th 760, 766 (*Golden Gate Hill*) ["The 60-day period specified in section 860 applies to any such 'reverse validation action.' [Citations] If no action is brought within the 60-day timeframe, the public is 'forever barred from contesting the validity of the agency's action in a court of law.' [Citations]"].)

No party disputes that a reverse validation action is the proper procedure to challenge an Article 34 action or that the City filed its action within the 60-day limit from the County enacting the Resolution on September 12, 2023.

VIII. ANALYSIS

The question this court resolves is whether the September 12, 2023 Resolution is a triggering event under section 36005, which is a prerequisite for the lawsuit. Under the statute, the triggering events are: notice of funding by the state or approval by ordinance or resolution of an application or proposal by the county. (§ 36005.) The court concludes that the September 12, 2023 Resolution is not a triggering event because the Resolution was not a proposal or application as defined in section 36005.

To resolve the issue, the court interprets section 36005. No case has directly addressed the issue of whether a party has timely brought a reverse validation action under Article 34. Our Supreme Court's opinion in *Davis, supra*, 51 Cal.3d 227 provides guidance. In *Davis*, city residents and taxpayers of the City of Berkeley sought to stay the development of an Article 34 housing project on the grounds that the city had failed to obtain approval for the specific project, and that two prior approvals by the city voters allowing a specified number of low-or-moderate-income public housing was insufficient to satisfy Article 34, even though the number of units to be built

was less than the number approved by the voters. (*Id.* at p. 231.) The issue as framed by the court was whether the Article 34 constitutional requirement of voter approval "is satisfied by voter approval of a ballot measure that specifies the maximum number of low-rent housing units to be developed, acquired, or constructed but provides no other information about the proposed project." (*Id.* at pp. 230–231.) The court, in interpreting Article 34, concluded the ballot measures that provided general approval for a certain number of low-to-moderate-income housing units satisfied Article 34 and the city was not compelled to secure further voter authorization before proceeding with the project. (*Id.* at p. 244.)

In reaching this conclusion, the court discussed the process that the United States Department of Housing and Urban Development (HUD) had used to provide those funds and the city's application and proposal to obtain funds. (*Davis*, *supra*, 51 Cal.3d at pp. 232-233.) Specifically, the court in two footnotes defined terms which are relevant here. First, in footnote 1, the court explained:

> Federal funding of low-income housing projects is governed by detailed administrative regulations. (See 24 C.F.R. § 941.101 *et seq.*) The procedure is generally a two-stage process. A local agency must first submit an "application," which the regulations define as "a preliminary submission ... which addresses local housing need and development priority." (24 C.F.R. § 941.103.) As the regulations explain, "The application is used by the field office to determine the extent that public housing funds will be allocated to specific allocation areas and which of several [public housing authorities], competing for contract authority within an allocation area, should be given the first opportunity to submit a proposal for developing a project." (*Ibid.*) An agency that has been successful at the application stage may then be invited by HUD to submit a "proposal," which the regulations define as "a detailed ... submission ... of all information, including identification and evidence of site control, necessary for the field office to approve a public housing project." (*Ibid.*)

(*Davis*, *supra*, 51 Cal.3d at p. 232, fn. 1.)

Thereafter, in footnote 8, the court tied these definitions into the requirements of Health & Safety Code sections 36003 and 36005:

> Section 36003 provides: "An action may be brought ... to determine the validity of *the action of a local public entity in giving preliminary or final approval to a proposal or application which may result in housing assistance benefiting persons of low income without obtaining prior referendum approval pursuant to Article XXXIV of the State Constitution.*" (Italics added.)

> Section 36005 states: "No judicial action attacking or otherwise questioning the validity of *the action of a local public entity in giving final approval to a proposal or application* which may result in housing assistance benefiting persons of low income *without obtaining prior approval pursuant to Article XXXIV of the State Constitution* shall be brought prior to the adoption of a resolution or ordinance by the legislative body of the local public entity approving the proposal or application, nor may any such action be brought at any time after 60 days from the date of adoption of the ordinance or resolution approving the proposal." (Italics added.)
>
> As noted above (*ante*, p. 232, fn. 1 *ante*, p. 232, fn. 1), the words "proposal" and "application" are terms of art in the public housing field. "Application" refers to "a preliminary submission ... which addresses local housing need and development priority ... [and which is] used by the [HUD] field office to determine ... which of several [competing public housing authorities] ... should be given the first opportunity to submit a proposal for developing a project" (24 C.F.R. § 941.103), while "proposal" refers to "[a] detailed ... submission ... of all information, including identification and evidence of site control, necessary for the field office to approve a public housing project." (*Ibid.*)

(*Davis*, *supra*, 51 Cal.3d at p. 242, fn. 8.) The court in *Blodget v. Housing Authority of Kern County* (1952) 111 Cal.App.2d 45, 50 also relied on federal housing definitions: "Appellant first argues that the term 'low-rent housing project', as defined in the Constitutional exception, must be interpreted as meaning an existing tangible group of dwellings, apartments or other living accommodations. This contention is without merit. A 'low-rent housing project' is defined in the constitutional provision as any 'development' composed of urban or rural dwellings, apartments, or other living accommodations for persons of low income. The word 'development' is defined in Title 42, Section 1402(5) of the United States Housing Act of 1937, ..." (*Id.* at p. 50; see also *Drake v. City of Los Angeles* (1952) 38 Cal.2d 872, 876–877 [referring to the concert of action between state and federal government and the state legislature's intent to cause to conform with the provisions of the Housing Authorities Law with the federal act].) The voter information guides for Article 34 and the unsuccessful attempt to repeal Article 34 in 1974 both refer to the federal government's involvement in housing. (Exhibits Stip. 18:229 [1950 argument against Proposition 10 that: "This proposed measure is an attempt to discourage the construction of new low-rent housing projects (in which veterans have preference) by setting up a slow, cumbersome and costly procedure to make use of federal funds,..."]; *id.* 19:296 [1974 argument by Willie L. Brown, Jr. and others in favor of Proposition 13 that the federal government pays as much as 90%

of the total development costs of public housing]; see also *Patitucci*, *supra*, 22 Cal.3d at p. 178 [citing 1950 ballot argument regarding federal subsidies].)

While the City contends that the court should not rely on *Davis* because the HUD statutes upon which the Supreme Court relied are inoperative (City's Objection Nos. 12-19), the court disagrees. While the court acknowledges that in *Davis*, the City of Berkeley sought funds from HUD, the *Davis* court noted that "the words 'proposal' and 'application' are terms of art in the public housing field." (*Davis*, *supra*, 51 Cal.3d at p. 242, fn. 8.) Thus, the court does not read the discussion in *Davis* defining "applications" and "proposals" to be limited to projects involving HUD funds. Footnote 8 comes at the end of a sentence where the Supreme Court refers to both section 36003 and 36005 and puts the word application is quotations, which further supports the conclusion that the definitions of application and proposal in section 36005 are not limited to cases involving HUD funding. The reliance by the Supreme Court in *Davis* on the federal housing definitions is consistent with case law and the historical background surrounding Article 34. The Homekey Program is another housing collaboration between the federal government and California. (Exhibits Stip. 5:26 ["Of the $736 million in Homekey funding, $435 million is derived from the Coronavirus State Fiscal Recovery Fund (CSFRF) established by the federal American Rescue Plan Act of 2021 (ARPA (Public Law 117-2) and $301 million is State General Fund."].)

Moreover, in 1992, two years after *Davis*, the Legislature amended section 36005 to authorize a civil action to determine the validity of the action of a state agency. (Housing—Low–Rent Housing Projects—Validation Of Actions, 1992 Cal. Legis. Serv. Ch. 596 (S.B. 1928) (WEST).) The same bill modified the definition of "low-rent housing" in Health and Safety Code section 37001, but the Legislature did not amend section 36005 to define either "application" or "proposal." (*Ibid.*) The Legislature's failure to define "application" or "proposal" after *Davis* in amending section 36005 can be inferred as legislative acquiescence to the definitions in *Davis*. (*Zamora v. Clayborn Contracting Group, Inc.* (2002) 28 Cal.4th 249, 257.)

The City contends, without citation to legal authority, that: "Because "proposal" is not a defined term in Health & Safety Code, sections 36003 or 36005, or in Article 34 itself, the

reasonable definition to apply here is a lay-person's definition. The City cites to dictionary definitions, specifically, "Merriam-Webster defines 'proposal' as 'an act of putting forward or stating something for consideration.' The Oxford English Dictionary defines 'proposal' as 'an act or (less commonly) the action of proposing that something be done, or of proposing to do something.' The Cambridge Dictionary defines 'proposal' as 'a suggestion, sometimes a written one' or 'a suggestion for a possible plan or action.' " (Objection No. 18 [footnotes omitted].) Under the City's interpretation, almost any action by a public entity could be challenged by a validation action. This broad reading of section 36005 is contrary to the policy supporting validation actions and the Legislative intent behind section 36005.

First, the purpose of the validation statute "is to provide a simple and uniform method for testing the validity of government action," and "the validation statutes have placed great importance on the need for a single dispositive final judgment" to settle promptly all questions about the validity of the public entities' action. (*Golden Gate Hill, supra*, 242 Cal.App.4th at p. 767; *McLeod v. Vista Unified School Dist.* (2008) 158 Cal.App.4th 1156, 1166.) The City's interpretation would lead to multiple decisions by a public entity being considered a proposal, and would provide what amounts to an open-ended time to challenge a project. This interpretation is contrary to having all issues decided in one judgment. (See *Urban Habitat Program v. City of Pleasanton* (2008) 164 Cal.App.4th 1561, 1573-1579 [finding that in order to provide certainty to property owners and local governments, the court interpreted Government Code section 65009 as imposing a time limit to challenge a housing decision and that each claim was to analyzed individually to determine if the claim satisfied the requirement challenge an "action" and was thus subject to the 90-day statute of limitations set forth in the statute].)

Second, the Legislature did not mirror the language in Article 34 when enacting section 36005. Article 34 uses the words "developed, constructed or acquired in any manner" to trigger the requirement of a vote for a low rent housing project. Section 36005, however, uses the terms "application" and "proposal" to trigger the right to file a lawsuit As discussed, *supra*, these words are terms of art in the housing field and there is no evidence to support a contention that the Legislature intended to deviate from these established definitions. The failure to track the

language of Article 34 suggests that the Legislature intended different triggering events for an Article 34 vote and a lawsuit challenging the lack of a vote.

Further support for the conclusion that the Legislature intended the terms "proposal" and "application" to be based upon the federal housing definitions can be found in the language of Health & Safety Code section 37000, which was also enacted in 1976 and is in the same division as 36005. Section 37000 makes various findings about housing, including that Article 34 was approved "regarding the development, acquisition, or construction of federally subsidized conventional public housing projects." (Health & Saf. Code, § 37000; *Patitucci*, *supra*, 22 Cal.3d at p. 177 ["In section 37000, the Legislature has made extensive findings about the motivating objects of article XXXIV as adopted by initiative in 1950, declaring that the article was primarily intended to provide 'a mechanism for expressing community concern regarding the development, acquisition, or construction of Federally subsidized conventional public housing projects.'"] The reference to the federal public housing projects in a statute enacted at the same time and within the same division, supports the interpretation that the Legislature intended the terms in 36005 to be based on the definition in the housing laws. The Legislature then limited the definition of low rent housing in the same part of Division 24 (Health & Saf. Code, § 37001), which is further support that section 36005 should be read narrowly.

Finally, the Legislature enacted section 36005 within two years after efforts by then Speaker of the Assembly Willie L. Brown, Jr. and others to repeal Article 34 had failed. (Exhibits Stip., 19:296 [1974 general election ballot information for Proposition 15 to repeal Article 34].) The court takes into account this historical background. (*Scholes v. Lambirth* Trucking Co. (2020) 8 Cal.5th 1094, 1108; *United Business Com. v. City of San Diego* (1979) 91 Cal.App.3d 156, 170.) The fact that the Legislature sought to repeal Article 34 mitigates against reading an expansive definition of "application" and "proposal" into section 36005.

The court thus rejects the City's argument and proceeds with its analysis of the Resolution using the definitions in *Davis*. Under the plain language of section 36005, certain actions by the County must occur before an action may be brought. (§ 36005 ["No judicial action... shall be brought prior to "the adoption of a resolution or ordinance by the legislative body of the local

public entity approving the proposal or application"]; see *Fix the City, Inc. v. City of Los Angeles* (2024) 100 Cal.App.5th 363, 372, as modified on denial of reh'g (Feb. 27, 2024), as modified (Mar. 7, 2024) [limitations periods in Government Code section 65009 triggered by specific acts of planning authorities]; *1305 Ingraham, LLC v. City of Los Angeles* (2019) 32 Cal.App.5th 1253, 1261 ["Under ordinary grammar rules, this clause [in Health & Safety Code section 65009, subdivision (c)(1)] means that a 'decision' is the relevant event from which the statute of limitations runs."].) Since section 36005 is written in the disjunctive, it establishes separate events that trigger the right to sue. (*People v. Reynoza* (2024) 15 Cal.5th 982 [use of word "or" designates alternative or separate categories]; *White v. County of Sacramento* (1982) 31 Cal.3d 676, 680 ["Such use of the word 'or' in a statute indicates an intention to use it disjunctively so as to designate alternative or separate categories."]; *In re E.A.* (2018) 24 Cal.App.5th 648, 661 [plain and ordinary meaning of the word 'or,' when used in a statute, is to designate separate, disjunctive categories, *i.e.* suggesting alternatives].)

A triggering event was the resolutions enacted on June 13, 2023 authorizing the application for Homekey funds because the resolutions authorized an application. (Exhibits Stip., 35:510-512 [resolution approving county making application for round 3 funds]; *id.*, 36:518-519.) The Homekey Program is a state program "to sustain and rapidly expand housing for persons experiencing homelessness or At Risk of Homelessness, and who are, thereby, disproportionately impacted by and at increased risk for medical diseases or conditions due to the COVID-19 pandemic or other communicable diseases." (Exhibits Stip., 5:26; see also *id.*, 5:31-32 [program overview].) In order to apply for Homekey funds, the public entity must submit an application. (Health & Saf. Code, § 50675.1.3, subd. (k), Exhibits Stip., 5:26, 33, 44, 48, 50, 64.) The County applied for state funds, including HomeKey funds, to acquire, rehabilitate and operate the project. (Exhibits Stip., 1:3 ["An application has been submitted to the State to help support the County's acquisition, rehabilitation and operation of the Property for Permanent Supportive Housing for County residents experiencing homelessness."].) This application process for Homekey funds is similar to the requirements of an "application" as defined in *Davis*, *supra*, 51 Cal.3d at p. 232, fn,1, 242, fn. 8 . (Exhibits Stip. Exhibits 5:48, 5:64-67.) A party could have challenged the

resolutions approving the application. (§ 36005 [no judicial action can be brought until after public entity has approved an application].) However, the City is not challenging the June 13, 2023 resolutions (City's Proposed Statement of Decision filed April 17, 2024 at p. 13) and, in any event, the action would be untimely because the action was filed more than six months after the resolutions were enacted. (*Golden Gate Hill, supra*, 242 Cal.App.4th at p. 766.) A public entity does not need to provide specifics when there is an Article 34 vote because as explained by *Davis*, nonspecific ballot measures satisfy Article 34 and if the voters are unwilling to approve a nonspecific measure, they can vote against it. (*Davis, supra*, 51 Cal.3d at pp. 242-243.) Thus, it is of no import that the June 13, 2024 resolutions were not specific and did not identify a specific property.

Another triggering event under section 36005 is an action by the State. (Section 36005 [no judicial action can be brought prior to the notice of funding commitment by the state agency].) The City is not and could not in this lawsuit challenge an action by the state, because no state agency has provided notice of a funding commitment to provide Homekey funds to the County for the Property. Therefore, no action by the State is a triggering event under section 36005.

The last triggering event under section 36005 is a public entity's approval of a proposal by a resolution. (§ 36005 [no action prior to public entity's approval by ordinance or resolution of a proposal].) The County's approval of the Resolution is not a proposal because it does not contain the specificity of a proposal as defined by *Davis, supra*, 51 Cal.3d at p. 242, fn. 8 relying on 24 C.F.R. § 941.103. 24 C.F.R. § 941.103 is no longer operative but can be found on Westlaw in the prior version of the statute. Under the then existing regulations, a local housing agency initiates the funding process with the submission of an "application." Each application must be for the development of a specific project. (*Id.*, § 941.302(a).) When funds become available, those housing agencies whose preliminary applications have received "a high priority rating" are invited to submit project "proposals" (*id.*, § 941.301(b)), defined as "a detailed ... submission ... of all information, including identification and evidence of site control, necessary for the field

office to approve a public housing project." (*Id.*, § 941.103.)[6] Upon approval of such a proposal, HUD executes an "annual contributions contract" with the local housing agency to fund the project. (*Id.*, §§ 941.103, 941.402(d), 941.403(d).) In certain circumstances, HUD will provide preliminary or "front-end" funding for the development and submission of the proposal itself, based on an agency's preliminary application. (*Id.*, §§ 941.402(c), 941.403(c); see also *Davis v. City of Berkeley* (1988) 47 Cal.3d 512, fn. 1, *reh'g granted, opinion not citable* (Mar. 2, 1989), *vacated* (1990) 51 Cal.3d 227 and used by the court only for language of prior codes.)

While there are differences between the requirements in 24 C.F.R. 941.103 and the Homekey Program, the Homekey Program, like the HUD requirements, requires specific documentation, including "a description of the approved Project[7] and the permitted uses of funds," "The use, income, occupancy, and rent restrictions to be imposed on the Project through the Affordability Covenant," "performance milestones," and "Terms and conditions required by federal and state law." (Exhibits Stip. 5:48-49.)

The court acknowledges that to require compliance with an inoperative statute is not required, but *Davis* refers to the requirement of " '[a] detailed ... submission ... of all information, including identification and evidence of site control, necessary for the field office to approve a public housing project.'" (*Davis, supra*, 51 Cal.3d at p. 242, fn. 8 citing 24 C.F.R. § 941.103.) For resolution of this case, the court does not have to determine the exact requirements of a proposal because the Resolution does not provide any detailed information about the project. The Resolution only authorizes the purchase of the Property. (Exhibits Stip. 2.) Pursuant to the purchase agreement, the County's purchase of the property is contingent on its receipt of

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[6] "Proposal. A document submitted by a PHA to HUD, in accordance with subpart C of this part, for approval of the development of a public housing project. As used in this part, "proposal" refers to both the 'site acquisition proposal' (§ 941.303), and the 'full proposal' (§ 941.304), unless specifically indicated otherwise." (24 C.F.R. § 941.103 prior version.) Prior 24 C.F.R. § 941.303 requires for a site acquisition proposal: ((a) Justification; (b) Site information; (c) Zoning; (d) Development schedule; (e) Environmental assessment; and (f) Appraisal. Former 24 C.F.R. § 941.304, full proposal requires: (a) Project description; (b) Description of development method; (c) Site information;(d) Project costs; (e) Appraisal; (f) Financial feasibility;(g) Zoning; (h) Facilities;(i) Relocation; (j) Life-cycle analysis; (k) Project development schedule; (l) Environmental assessment; (m) Occupancy and operation policies; (n) New construction certification.

[7] "Project" is defined as "a structure or set of structures providing housing or shelter with common financing, ownership and management.' (Exhibits Stip. 5:80.)

Homekey funds. (*Id.* 3:9.) The Resolution's only specification about the project is that it authorizes a purchase price of $33 million for the Property. (*Id.* 2:6.) There are no specifics about the number of units, the requirements for residing in a unit, rent payments, whether the property will be mixed use or allow others in addition to low-income residents to reside at the property, or any other information. (*Shepard, supra,* 75 Cal.App.3d at p. 462 [concluding that referendum was not required under Article 34 because, while the project was one that was "developed, constructed, or acquired" within the meaning of Article 34, it was speculative to determine if the project was a "low rent housing projection" because that fact "that cannot be determined in advance, because it will depend on future decisions as to size, character, and cost of the units to be developed, and market conditions at that time."].)

Additionally, there is no final determination that the Property will be used to house people with low incomes. The reference to low-income residents in the Resolution is in a "whereas" provision which provides that the County has determined that "the Property should be converted to provide permanent rental housing to low-income County residents experiencing homelessness." (Exhibits Stip. 2:5.) A "whereas" provision is a clause that has no legal effect. (*Hawaii v. Office of Hawaiian Affairs* (2009) 556 U.S. 163, 175 ["whereas" clause in resolution has no legal effect.].) Until the County approves a project through Resolution or Ordinance that contains these specifics, there is not a proposal that the City can challenge.

Therefore, since the triggering event of the County's approval of a proposal for the Property has not occurred, the City's action is not ripe for determination. (§ 36005.)

IX. CONCLUSION

The Court dismisses the City's action without prejudice. Within ten days, the County is to prepare a proposed judgment and the City has ten days to object. The parties shall email the proposed judgment and objections to Department 4 as well as filing and serving them.

Dated: June 17, 2024

NANCY L. FINEMAN
Judge of the Superior Court