

## **2008 Proposed IIG Program Guideline Changes (Rev. November 24, 2008)**

The Infill Infrastructure Grant Program (IIG) received comments from over 70 stakeholders offering suggestions to enhance the guidelines for the second-round Notice of Funding Commitment (NOFA). We read and discussed each and every comment we received.

In crafting the final draft guideline changes, listed below, we incorporated those suggestions which enhanced fairness in the process, benefited the greatest number of stakeholders, were consistent with statute, and furthered the mission of the IIG Program. We also took the opportunity to clarify language which some stakeholders found confusing, but made no actual change to current practice.

We also received many comments regarding the split of grant funds between Qualifying Infill Projects (QIPs) and Qualifying Infill Areas (QIAs). This important issue will be addressed in the NOFA.

### **Section 302(d) and 302(l) – Definition of Bus Hub and Major Transit Stop**

#### **Recommendation:**

There were concerns that the definition for a Bus Hub and a Major Transit Stop was too restrictive and not necessarily reflective of differences in employment patterns in localities outside of major urban areas. A change was made to allow the transit agency to suggest alternative peak hours for the transportation corridor.

### **Section 302(e) – Definition of Bus Transfer Station**

#### **Recommendation:**

There were concerns that defining a Bus Transfer Station as requiring multiple docking facilities, ticketing services, and passenger shelters is unfair to less urban areas and the definition should be less restrictive to only require two of the three elements. No change was made because modifying the definition would allow a site where multiple bus lines intersect and has passenger shelters (i.e., a Park and Ride) to qualify under this definition.

### **Section 302(o) – Definition of Net Density**

#### **Recommendation:**

A change was made to the definition of Net Density to incorporate existing practices by adding public rights of way, easements, encroachments and dedicated open spaces to items excluded from the calculation.

### **Section 302(v) – Definition of Site Control**

#### **Recommendation:**

There were requests to allow a purchase contract to expire prior to the award date as long as the applicant can demonstrate funds committed for the purpose of acquiring the property. As the IIG program is so oversubscribed, the Department must ensure that the applicant possesses site control at the time of application to evidence readiness. There were also requests to allow site control under a “partner public agency” that is not an eligible applicant. No change was made because it should not be a problem for partnered public agencies to draft an enforceable legal agreement granting site control.

### **Section 302(z) – Definition of Urban Uses**

#### **Recommendation:**

There were requests to remove the restriction that urban uses do not include land zoned for agricultural uses, which jeopardizes the eligibility of sites either dual zoned or where the zoning is a leftover remnant and not reflective of current uses. A change was made to remove the restriction, but also added new language to define minimum lot sizes for single family residential to avoid adjoining “ranchettes” and other sites not truly indicative of infill development.

### **Section 303(a)(3)(C) – Replacement Housing and 15% Threshold**

#### **Recommendation:**

There were comments concerning that if the replacement housing doesn’t count towards the overall affordability, then the number of affordable units required should be based on the project less the replacement units rather than including these units. No change was made because this is a statutory requirement and the Department supports the interpretation proposed in the guidelines as the most accurate representation of the intent of the legislation. There were also several comments received that supported the clarification written into the guidelines.

### **Section 303(a)(4) – Density**

#### **Recommendation:**

There were comments that revolved around **not** using the Mullin Densities or allowing cities that already meet their Regional Housing Needs Assessment (RHNA) to not meet the required densities for this Program. No change was made because it is a statutory requirement to use the Mullin Densities.

### **Section 303(a)(6) – Infill Requirements and Environmentally Sensitive Areas/Wetlands (also Net Density)**

#### **Recommendation:**

There were requests to allow environmentally sensitive areas and wetlands to be both excluded from the Net Density requirement for the subject site and the perimeter calculation similar to what is allow for developed parks. A change was made to add verbiage to the Net Density definition [please see Section 302(o)] that states public rights of way, easements, encroachments and dedicated open space (but not wetlands) can be excluded from Net Density as part of the infill perimeter exclusion.

### **Section 303(c) – Qualifying Infill Project Joint Ownership Requirement**

#### **Recommendation:**

There were comments that the proposed new language requiring housing development components to be jointly submitted for entitlements unfairly penalizes large, multi-phase projects that must submit phases independently. To respond to this concern, language was changed from “jointly submitted” to “jointly considered.”

### **Section 304(a)(5) and (d)(2) – Parking**

#### **Recommendation:**

There were many comments involving the exclusion of grading and site work costs for parking structures built underneath housing units. Additionally, there were questions concerning how the Department would evaluate parking structure costs relative to other projects in the area. Several suggested alternatives that the Department establish a flat, per space parking allowance. In response to these comments and concerns, a \$40,000 per space limit was established and Section 304(d)(2) was amended to exclude only acquisition for the site below a podium parking structure. Therefore, grading, foundations and site work are now allowable costs in parking structures where the housing is located above. This change allows other incremental costs, but is tempered by the per-space dollar limit and the one space per unit limit.

### **Section 305(e) – Feasibility**

#### **Recommendation:**

There were requests not to require market studies for mutual self-help projects due to the unique nature of the development and because they are typically far below market. Other HCD programs such as CalHOME only require local market data to demonstrate feasibility. A change was made to allow other feasibility

documentation that is standard of the industry for that type of proposed housing development.

### **Section 306(c) – Performance Requirements**

#### **Recommendation:**

There was a question regarding the reason why the performance deadline date was selected. Additional language was added to clarify that the date is pursuant to the Budget Act.

### **Section 306(c) – Performance Requirements**

#### **Recommendation:**

There were various comments regarding both shortening the performance timeline and extending it. Proponents of extending the timeline indicate that large multi-phase projects require more time to get the housing built, and others indicate that the Proposition 1C money should have an immediate impact and thus should require a shorter performance timeline. No change was made since the comments were split on both sides.

### **Section 307(c) – Application Entities**

#### **Recommendation:**

Language was added clarifying that joint powers authorities comprised entirely of eligible applicants are eligible to apply.

### **Section 307(d) – Geographic Distribution**

#### **Recommendation:**

There were requests to either establish a rural set-aside or skew the geographic distribution based on population, ultimately advantaging the Southern portion of the State. Since the first round NOFA actually supported the established distribution, receiving about 45% of the total applications from Northern California, 45% from Southern California and 10% from the Central Valley, no change was made to the geographic distribution of funds.

### **Section 308 (d) – Construction Starts**

#### **Recommendation:**

There were several requests to allow units that have already begun construction to be allowed in the application. A couple of the situations were cited: (1) cases in which a project was not funded in the first round, begun construction, and now

requests that those units be considered eligible; (2) projects that previously developed affordable units as an inclusionary requirement for market rate housing but, due to market condition changes, is no longer viable. A change was made to allow the commencement of construction prior to the grant application due date only for affordable housing projects in which: (1) the affordable housing requirements were locally mandated in agreements dated prior to the enactment of IIG program legislation, and (2) the developer made significant funding contributions to the project not less than 30% of the total development cost.

### **Section 309(a)(1)(A) – Environmental Review**

#### **Recommendation:**

A change was made to the Environmental Review scoring to incorporate existing practices by adding the language “or mitigated negative declaration” to identify satisfactory clearance requirements under CEQA to allow full points to be awarded in this category.

### **Section 309(a)(2) and Section 310(a)(2) – Land Use Entitlements**

#### **Recommendation:**

There were several comments stating that projects approved “by right” should receive full points and that design review should be excluded from determining if a project has all its entitlements. Although “by right” is implied in the existing guidelines, a change to the language was added to clarify this point. Also, clarifying language was added excluding design review in obtaining all necessary discretionary local land use approvals. Conforming language was added to Section 310(a)(2) to match this section.

### **Section 309(a)(3)(B and C) – Funding Commitment Levels**

#### **Recommendation:**

A large portion of the comments received were concerning the funding commitment scoring at 95% for full points and the problem of securing a tax credit reservation letter due to TCAC’s schedule and its requirement to have all other funding in place prior to the application deadline. A change was made to allow low income housing tax credit equity contributions to be considered committed in the scoring calculation without having to obtain a tax credit reservation letter or any other documentation.

There were several requests to allow for land donations to be considered as a commitment. Language was added to this section and sections related to local support allowing for land donations supported by an appraisal to be included as an eligible commitment.

### **Section 309 (a)(3)(D) – Funding Commitment Substitution**

#### **Recommendation:**

There were concerns that not allowing any substitution of owner equity or developer funds is too strict and is not consistent with TCAC regulations. A change was made to allow up to a 50% deferred developer fee substitution, thus conforming to TCAC's standards.

### **Section 309 (a)(4) and Section 310 (a)(4)– Local Support**

#### **Recommendation:**

There were several comments regarding the 25% funding commitment from a local public agency for the Capital Improvement Project requesting that funding commitments towards the Qualifying Infill Project count as well. A change was made in this section and in the corresponding QIA section to include local funds contributed to the Qualifying Infill Project or area in the funding commitment calculation. Additionally, language was added to this section allowing for land donations supported by an appraisal to be included as an eligible commitment.

For Localities that have not yet had their Housing Elements reviewed, there were concerns that older Housing Elements that did not require assessor's parcel numbers in the site inventory would be disadvantaged simply by their place in the Housing Element update cycle. Changes were made to provide additional alternatives to demonstrate local support.

### **Section 309(b) – Affordability**

#### **Recommendation:**

Comments were made on both ends of the spectrum regarding affordability. Some requested increased points for rental units due to the downturn in the market, and some advocated a greater increase in points for ownership units. There were also comments supporting the new affordability scoring. No changes were made at this time, but this area will be evaluated again after the second round of funding.

### **Section 309(d) – Access to Transit**

#### **Recommendation:**

There was a wide array of comments regarding access to transit ranging from supporting the existing guidelines to asking for less stringent rules for rural areas to defining the distance to be a “straight distance” rather than a walkable route. Also there were requests to increase the weight of the transit points. No change was made because existing research supports the one-half mile and one mile distinction in walking distance to the Transit Station of Major Transit Stop. However, the definition of a Bus Hub and Major Transit Stop was modified [Please see Section 302(d) and 302(l)].

### **Section 309(e) – Proximity to Amenities**

#### **Recommendation:**

There were a few comments advocating that the Program utilize the TCAC list of amenities or the TOD list of amenities. No change was made because the list of amenities is clearly outlined in the statute.

### **Section 309(f) and 310(f) – QIP and QIA Consistency with Regional Plans**

#### **Recommendation:**

There were several requests to allow draft regional blueprint plans to be used instead of formally-adopted plans to determine whether a project is consistent. No change was made because a draft plan may later be modified before adoption. However, due to some confusion about who can submit determination letters, language has been included that only allows letters from the council of governments (COGs) confirming the consistency with the regional plan.

### **Section 310(d) – QIA Proximity to Amenities**

#### **Recommendation:**

There were many comments regarding the number of amenities needed to get full points. Very large projects were concerned about the total number of amenities, and smaller ones were concerned with having to have one of each available amenity. The scoring was revised to assign points per amenity with a separation in the amount of points between projects of 200 or more residential units and project of less than 200 units thus resulting in less of a need for repeated amenities. Also language was added allowing for 50 percent of the amenities to come from one subcategory instead of 25 percent.

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