

# INFILL INFRASTRUCTURE GRANT PROGRAM

~~DISCUSSION~~ SECOND DRAFT GUIDELINES

~~12/24/07~~ 01/25/08

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## ARTICLE 1. General

### Section 300. Purpose and Scope

The purpose of these Guidelines is to implement and interpret Part 12 of Division 31 of the Health and Safety Code (commencing with Section 53545.12), which establishes the Infill Incentive Grant Program of 2007, hereinafter referred to as the Infill Infrastructure Grant Program.

### Section 301. Program Description- An Overview

The Infill Infrastructure Grant Program was funded by Proposition 1C, the Housing and Emergency Shelter Trust Fund Act of 2006. Its primary objective is to promote infill housing development. The program seeks to accomplish this objective by providing financial assistance for infrastructure improvements necessary to facilitate new infill housing development. Approximately \$240 million is available for allocation during FY the 2007-08 state fiscal year.

Under the program, grants are available as gap funding for infrastructure improvements necessary for specific residential or mixed use infill development projects. Both infill projects and areas must have either been previously developed or be largely surrounded by development. Specific eligible improvements include: development or rehabilitation of parks or open space, water, sewer or other utility service improvements, streets, roads, parking structures, transit linkages, transit shelters, traffic mitigation features, sidewalks and streetscape improvements.

Funds will be allocated through a competitive process, based on the merits of the individual infill projects and areas. The application selection criteria include project readiness, housing affordability, housing density, proximity and access to transit, parks, employment centers, and consistency with a regional blueprint or similar regional growth plan.

### Section 302. Definitions

The following definitions apply to the capitalized terms used in these Guidelines:

- (a) "Affordable Unit" means a unit that is made available at an affordable rent, as defined in Section 50053 of the Health & Safety Code, to a household earning no more than 60 percent of the Area Median Income or at an affordable housing cost, as defined in Section 50052.5 of the Health & Safety Code, to a household earning no more than 120 percent of the Area Median Income. Rental units shall be subject to a recorded covenant that

ensures affordability for at least 55 years. Ownership units shall ~~initially~~ be sold to and occupied by a qualified household, and subject to a recorded covenant that includes either a resale restriction for at least 30 years or equity sharing upon resale. Rent and income limits for rental Affordable Units shall be those established by TCAC except for units targeted for other income categories for which applications receive rating points under section 308. Those units will be restricted to the targeted income levels with rents not to exceed 30% of the income level in accordance with TCAC procedures.

- (b) "Area Median Income" means the most recent applicable county median family income published by TCAC.
- (c) "BID" means an owners' association as defined in Section 36614.5 of the Streets and Highways Code, for a business or property improvement district.
- (d) "Bus Hub" means an intersection of three or more bus routes, where one route or a combination of routes has a minimum scheduled headway of 10 minutes or at least six buses per hour during peak hours. Peak hours means the time between 7 a.m. to 10 a.m., inclusive, and 3 p.m. to 7 p.m., inclusive, Monday through Friday.
- (e) "Bus Transfer Station" means an arrival, departure, or transfer point for the area's intercity, intraregional, or interregional bus service having permanent investment in multiple bus docking facilities, ticketing services, and passenger shelters.
- (f) "Capital Asset" means tangible physical property with an expected useful life of 15 years or more. "Capital assets" also means tangible physical property with an expected useful life of 10 to 15 years for costs not to exceed 10% of the Program grant. "Capital Asset" includes major maintenance, reconstruction, demolition for purposes of reconstruction of facilities, and retrofitting work that is ordinarily done no more often than once every 5 to 15 years or expenditures that continue or enhance the useful life of the capital asset. "Capital Assets" also includes equipment with an expected useful life of two years or more. Costs allowable under this definition include costs incidentally but directly related to construction or acquisition, including, but not limited to, planning, engineering, construction management, architectural, and other design work, environmental impact reports and assessments, required mitigation expenses, appraisals, legal expenses, site acquisitions, and necessary easements.
- (g) "Capital Improvement Project" or "Project" means the construction, rehabilitation, demolition, relocation, preservation, acquisition, or other physical improvement of a Capital Asset that is an integral part of, or

necessary to facilitate the development of, a Qualified Infill Project or Qualified Infill Area.

- (h) “CCR” means the California Code of Regulations.
- (i) “Department” means the Department of Housing and Community Development of the State of California.
- (j) “Locality” means a California city, county or city and county.
- (k) “Lower ~~income~~Income” has the meaning set forth in Health and Safety Code Section 50079.5.
- (l) “Major Transit Stop” means a bus, ferry or rail stop served by either:
  - (1) one route departing nine or more times between both 7:00 a.m. to 10:00 a.m., inclusive, and 3:00 p.m. to 7:00 p.m., inclusive, Monday through Friday; or
  - (2) two or more routes departing 12 or more times between both 7:00 a.m. to 10:00 a.m., inclusive, and 3:00 p.m. to 7:00 p.m., inclusive, Monday through Friday
- (m) “Moderate Income” has the meaning set forth in Health and Safety Code Section 50093.
- (n) “MHP” shall mean the Multifamily Housing Program authorized and governed by Sections 50675 through 50675.14 of the Health and Safety Code and the regulations promulgated there under in 25 CCR 7300, *et seq.*
- (o) “Net Density” means the total number of dwelling units per acre of land to be developed for residential or mixed use, excluding dedicated streets, sidewalks, parks and open space. Except for the determination of project eligibility pursuant to Section 303, the number of dwelling units in mixed use Qualified Infill Projects shall be adjusted to include the number of units that could have been developed in the non-residential space of the development at the same densities as the residential space. This number shall not exceed 25 percent of the actual number of residential units in the development.
- (p) “NOFA” means a Notice of Funding Availability for the Program issued by the Department.
- (q) “Program” means the Infill Infrastructure Grant Program as implemented by these Guidelines.

- (r) “Qualifying Infill Area” means an area designated in the Program application that meets the criteria for a Qualifying Infill Area set forth in Section 303. Qualifying Infill Area also includes a multi-phased development consisting of 200 or more residential units where the first phase meets the criteria for a Qualified Infill Project with the exception of Paragraph (3) of Subdivision (b) of Section 303.
- (s) “Qualifying Infill Project” means a residential or mixed-use residential development project designated in the Program application that meets the criteria for a Qualifying Infill Project set forth in Section 303.
- (t) “Recipient” means the public agency, private developer or BID receiving a commitment of Program funds for an approved project.
- (u) “Rural Area” has the meaning set forth in Health and Safety Code 50199.21.
- (v) “TCAC” means the California Tax Credit Allocation Committee.
- (w) “Transit Station” means a rail or light-rail station, ferry terminal, Bus Hub, or Bus Transfer Station. Included in this definition are planned transit stations otherwise meeting this definition, whose construction is programmed into a Regional or State Transportation Improvement Program to be completed no more than five years from the application due date.
- (x) “Urbanized Area” means an incorporated city, or an urbanized area or urban cluster as defined by the United States Census Bureau, or an unincorporated area within an urban service area that is designated in the local general plan for urban development and is served by public sewer and water.
- (y) “Urban Uses” mean any residential, commercial, industrial, public institutional, transit or transportation passenger facility, or retail use, or any combination of those uses.
- (z) “Very-low Income” has the meaning set forth in Health and Safety Code Section 50105.

## ARTICLE 2. Program Requirements

### Section 303. Eligible Projects

- (a) To be eligible for funding, a Capital Improvement Project must be an integral part of, or necessary to facilitate the development of either a

Qualifying Infill Project or a Qualifying Infill Area. The Qualifying Infill Project or Area must:

- (1) Be located in an Urbanized Area.
- (2) Be located in a Locality which has an adopted housing element that has been found by the Department to be in substantial compliance with the requirements of Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code, pursuant to Section 65585 of the Government Code. Compliance must be established as of the due date for applications pursuant to the NOFA.
- (3) Include not less than 15 percent of the total residential units to be developed in the Qualifying Infill Project or Qualifying Infill Area as Affordable Units.
  - (A) For Qualifying Infill Projects developed in phases, or Qualifying Infill Areas, the percent of affordable units shall be calculated on a cumulative basis, including all units completed or under construction in the current or previous phases, and the 15 percent minimum requirement must be met at the completion of each phase or subsequent development. The Department may modify this requirement to conform to a similar local public agency requirement, provided that it determines that the local requirement will reliably result in completion of the required Affordable Units within a reasonable period of time.
  - (B) For developments that contain both rental and ownership units, units of either or both product types may be included in the calculation of the percentage of Affordable Units.
  - (C) A disposition and development agreement or other project- or area-specific agreement between the developer and the local agency having jurisdiction over the Project executed on or before August 24, 2007 shall be deemed to meet the affordability requirement of this paragraph if the agreement includes affordability covenants that subject the Qualifying Infill Project or Area to the production of affordable units for very low, low-, or moderate-income households.
  - (D) Replacement housing units required to be provided by a community redevelopment agency pursuant to redevelopment law shall not be counted toward meeting the requirements of this paragraph.

- (4) Include average residential Net Densities on the parcels to be developed that are equal to or greater than the densities described in subparagraph (B) of paragraph (3) of subdivision (c) of Section 65583.2 of the Government Code, except that in a Rural Area the average residential Net Densities on the parcels to be developed shall be at least ten units per acre.
- (5) Be located in an area designated for mixed-use or residential development (including areas where these types of development are allowable through a conditional use permit process) pursuant to one of the following adopted plans:
  - (A) A general plan adopted pursuant to Section 65300 of the Government Code.
  - (B) A project area redevelopment plan approved pursuant to Section 33330 of the Health & Safety Code.
  - (C) A regional blueprint plan as defined in the California Regional Blueprint Planning Program administered by the Business, Transportation and Housing Agency, or a regional plan as defined in Section 65060.7 of the Government Code.
- (6) Have either:
  - (A) at least 75 percent of the area included within the Qualifying Infill Project or Qualifying Infill Area as previously improved (including areas where improvements have been demolished) or used for any use other than open space, agriculture, forestry, or ~~industrial or~~ mining waste storage (including areas where improvements have been demolished); or
  - (B) at least 75 percent of the perimeter of the Qualifying Infill Project or Qualifying Infill Area adjoining parcels that are developed with Urban Uses, or is separated from parcels that are developed with Urban Uses only by an improved public right-of-way. In calculating this percentage, perimeters bordering navigable bodies of water and improved parks shall not be included.
- (7) If located in a redevelopment project area, meet the replacement housing requirements contained in subdivision (a) of Section 33413 of the Health & Safety Code.

(b) In addition, Eeach Qualifying Infill Area must:

(1) include entirely within its boundaries a Qualifying Infill Project which meets the definition and criteria for a Qualifying Infill Project; and that has received all land use entitlements required for construction, or has entitlement applications pending before the appropriate jurisdiction, which applications have been deemed to be complete pursuant to the Permit Streamlining Act, (Chapter 4.5 of Division 1 of Title 7 of the Government Code, commencing with section 65920);

(2) be a contiguous, coherent area treated as a discrete planning area in local planning documents and that does not contain extensions or satellite areas included solely to meet Program requirements;

(3) include a Qualifying Infill Project total of at least twice as many residential units as the that cannot contain more than 50 percent of the total housing units Qualifying Infill Project included in proposed for the Qualifying Infill Area.

- (c) A Qualifying Infill Project must be ~~must be~~ a discrete development with a common development scheme and common or related ownership and financing structures.

#### Section 304. Eligible Costs

(a) ~~At least 80 percent of the~~ Program grant amount funds must be used for reasonable and necessary costs of a Capital Improvement Project required as a condition of, or approved by local the local jurisdiction in connection with its approval of, entitlements for the Qualifying Infill Project or Qualifying Infill Area, Costs must reasonable compared to similar infrastructure projects of modest design in the general area of the Capital Improvement Project. Eligible costs including include the construction, rehabilitation, demolition, relocation, preservation, acquisition, or other physical improvement of the following:

(1) The creation, development, or rehabilitation of parks or open space. No more than \$200 million of the total available Program funds shall be awarded for this activity.

(2) Water, sewer, or other utility service improvements and relocation.

(3) Streets and road construction and improvement.

- (4) Required replacement of transit station parking spaces, ~~plus~~
- (5) The minimum residential per unit parking space as required by local land use entitlement approval, not to exceed one parking space per residential unit in parking structures.
- ~~(56)~~ Transit linkages and facilities, including, but not limited to, related access plazas or pathways, or bus and transit shelters.
- ~~(67)~~ Facilities that support pedestrian or bicycle transit.
- ~~(78)~~ Traffic mitigation devices, such as street signals.
- ~~(89)~~ Site preparation or demolition.
- ~~(910)~~ Sidewalk or streetscape improvements, including, but not limited to, the reconstruction or resurfacing of sidewalks and streets or the installation of lighting, signage, or other related amenities.
- ~~(4011)~~ Storm drains, storm water detention basins, culverts, and similar drainage features.
- ~~(4112)~~ Required environmental remediation necessary for the development of the Capital Improvement Project, where the cost of the remediation does not exceed 50% of the Program grant amount.
- (13) Site acquisition or control for the Capital Improvement Project including, but not limited to, easements and rights of way.
- ~~(4214)~~ Other capital asset costs approved by the Department and required as a condition of local approval for the projectCapital Improvement Project.

~~—(b) Up to 20 percent of the grant amount may be used for other capital asset costs not required as a condition of local approval of the Qualifying Infill Project or Qualifying Infill Area where the applicant can demonstrate to the satisfaction of the Department that the Capital Improvement Project is consistent with and in furtherance with the goals and intent of the Program, and is an integral part of the development of the Qualifying Infill Project or Qualifying Infill Area.~~

- ~~(eb)~~ Impact fees are eligible for funding only if used for identified Capital Assets ~~otherwise~~ eligible for funding and required by local ordinance.

(~~dc~~) Costs are not eligible for funding if there is another feasible, available source of funding for the Capital Asset or portion thereof to be funded by the Program.

(~~ed~~) The following costs are not eligible:

- (1) Parking spaces and structures, except as provided in Paragraphs (a) (4) and (5) above.
- (2) Costs of site acquisition, grading and foundations for housing and mixed use structural improvements.
- (3) Costs of housing or mixed use structures.
- (4) Any costs not permitted as a Capital Asset cost under Government Code Section 16727.
- (5) Soft costs related to ineligible costs.
- (6) In lieu fees for local inclusionary programs.
- (7) Brownfield clean up activities eligible for funding under the CalReUSE program administered by the California Pollution Control Financing Authority.

### Section 305. Grant Terms and Limits

- (a) The total maximum grant amount shall be limited based on the number of units in the Qualifying Infill Project or Qualifying Infill Area, the bedroom count of these units, and the density and affordability of the housing to be developed. The Department shall publish a table listing per unit ~~loan-grant~~ limits for each NOFA based on these factors.
- (b) For Qualifying Infill Projects, the Program grant amount shall not be less than ~~\$1 million~~ \$500,000 or ~~\$500,000~~ \$250,000 for Rural Areas. For Qualifying Infill Areas, the Program grant amount shall not be less than \$2 million, or \$1 million in Rural Areas. The Program grant shall not exceed \$20 million for each Qualifying Infill Project and \$30 million for each Qualifying Infill Area. Over the life of the Program, the total of ~~all~~ all Program awards for any single Qualifying Infill Project or Qualifying Infill Area, including the Qualifying Infill Project within a Qualifying Infill Area, shall not exceed \$50 million. The Department will ~~accept fund~~ only one application for each Capital Improvement Project or portion thereof. In each NOFA, the Department will fund only one application for each -Qualifying Infill Project and Qualifying Infill Area. ~~The~~

~~Department will not accept an application for a Qualifying Infill Project located in a Qualifying Infill Area for which an application for Program funds is pending.~~

- (c) The applicant must demonstrate that the grant does not result in the developer or developers benefiting from the Qualifying Infill Project or Area or the Capital Improvement Project by realizing a profit that exceeds the commercially reasonable range for other developments of similar size and level of risk. The applicant must show that Program funds are reasonably necessary for Project feasibility and no other source of compatible funding is reasonably available, including funds available to excess surplus amounts as defined by paragraph (1) of subdivision (g) of section 33334.12 of the Health and Safety Code held by redevelopment agencies in their Low- and Moderate-Income Housing Trust Funds not committed to other projects.
- (d) BID applicants must demonstrate that it is not feasible to finance receipt of Program funds will not result in a decrease in the level of assessments the Project through assessment of or businesses in f the business improvement area as provided in Chapter 3, Part 6, Division 18 (commencing with section 36530) of the Streets and Highways Code.
- (e) Conditions precedent to the first disbursement of Program funds shall include receipt of all required public agency entitlements and all required funding commitments for the Qualified Infill Project supported by the Capital Improvement Project. Alternatively, if the Qualified Infill Project includes multiple phases or developments, no program funds shall be disbursed until all entitlements and funding commitments for at least the first phase of the Qualified Infill Project have been received.
- (f) Prior to the disbursement of grant funds to ~~the~~ joint applicants where one of the applicants is described in section 306(c)(3) a BID, they shall submit to the Department documentation from the local permitting authority demonstrating that the applicant has received building permits for Affordable Units associated with the Qualifying Infill Project or Qualifying Infill Area in an amount equal to or greater than the number of housing units in the approved grant application in terms of number of bedrooms and level of affordability.
- (g) Funds will be disbursed as progress payments for approved eligible costs incurred subject to the requirements of these Guidelines. In a Qualifying Infill Area, disbursement of funds for improvements in excess of those needed for the first phase of the Qualifying Infill Project shall be conditioned i) on the need for the additional improvements at the time of the disbursement request and ii) the

receipt of ~~en~~ evidence acceptable to the Department that the housing development(s) proposed to be supported by the additional fund disbursement having received all discretionary development entitlements are consistent with applicable planning and zoning requirements.

{(h)- Where approval by a local public works department, or its equivalent, is required for the Capital Improvement Project, the application must include a statement from that department, or other documentation acceptable to the Department, indicating that the Capital Improvement Project is consistent with all applicable policies and plans enforced or implemented by that department.

- (~~h~~i) Recipients will be required to repay disbursed Program grant funds where construction of residential units used as the basis for calculating the grant amount pursuant to Section 305(a) has not received building permits within 5 years from the date of the Program grant award. The Department may provide one extension to these deadlines, for a term not to exceed 5 years, if the Recipient demonstrates that construction has not begun for reasons ~~entirely~~ outside their control, such as deteriorating market conditions. The amount to be repaid shall be the same proportion to the total grant amount as the number of residential units where construction has not timely commenced to the total number of designated residential units.

### ARTICLE 3. Application Procedures

#### Section 306. Application Process

- (a) The Department shall offer Program funds through a NOFA in accordance with the procedures for MHP NOFAs set forth in 25 CCR 7317, consistent with the requirements of these Guidelines. Each NOFA may allocate funds between Qualifying Infill Projects and Qualifying Infill Areas. ~~In such event a~~ Applicants cannot submit an application for a Capital Improvement Project, or portion thereof, for which an application is submitted under the other allocation in the same NOFA or for which an award of Program funds has been made under previous NOFAs.
- (b) Applications shall be made on forms made available by the Department.
- (c) Applicant Entities shall be the following:

- (1) For Qualifying Infill Projects, the nonprofit or for-profit developer of the Qualifying Infill Project, either by itself or as co-applicant with a Locality, public housing authority or redevelopment agency with jurisdiction over the area in which the Qualifying Infill Project is located.
  - (2) For Qualifying Infill Areas, a Locality, public housing authority, or redevelopment agency that has jurisdiction over the Qualifying Infill Area, or one of these entities together with a BID as joint applicants, provided that the BID includes, or is contained within, the Qualifying Infill Area.
- (d) The Department shall evaluate applications for compliance with the threshold requirements listed in Section 307, and score them based on the application selection criteria listed in Sections 308 and 309. The highest scoring applications that meet all threshold requirements shall be selected for funding as specified in the NOFA, except that the Department may make adjustments in this procedure to meet the following geographic distribution objectives of each NOFA:
- (1) awarding not less than 45% of total funds to projects located in Southern California (those located in Kern, San Bernardino, San Luis Obispo, Santa Barbara, Ventura, Los Angeles, Orange, Riverside, San Diego or Imperial counties);
  - (2) awarding not less than 30% of total funds to projects located in Northern California (those not located in the counties specified in the previous paragraph); and
  - (3) awarding not less than 20% of total funds to projects located the Central Valley (Shasta, Tehama, Glenn, Butte, Colusa, Sacramento, El Dorado, Sutter, Yuba, Yolo, Placer, San Joaquin, Stanislaus, Merced, Madera, Fresno, King and Tulare counties). Funds committed to projects in these counties shall be counted as funds awarded to Northern California counties under paragraph (d)(2) above.
- (e) The NOFA may specify a minimum number of ranking points for a Project to be eligible for funding.
- (f) The Department may elect to not evaluate compliance with some or all threshold requirements for applications that are not within a fundable range, as indicated by a preliminary point scoring.
- (g) Applications selected for funding shall be approved subject to conditions specified by the Department.

## Section 307. Application Threshold Requirements

- (a) To be considered for Program funding, applications must include a Qualified Infill Project, including those Qualified Infill Projects used to establish the eligibility of a Qualified Infill Area, and meet all of the following threshold requirements:
- (1) The application must be for a Capital Improvement Project eligible pursuant to Section 303 and the applicant must be eligible pursuant to subdivision 306(c).
  - (2) All proposed uses of Program funds must be eligible pursuant to Section 304.
  - (3) The application must be sufficiently complete to assess the feasibility of the application and its compliance with Program requirements.
  - (4) Construction of the Capital Improvement Project has not commenced.
  - (5) The Capital Improvement Project is infeasible without Program funds, and other available funds are not being supplanted by Program funds.
  - (6) The applicant or developer of the Capital Improvement Project must have site control sufficient to ensure the timely commencement of the Capital Improvement Project as determined by the Department.
  - ~~(7) Where approval by a local public works department, or its equivalent, is required for the Capital Improvement Project, the application must include a statement from that department indicating that the Capital Improvement Project is consistent with all applicable local rules, regulations, codes, policies and plans enforced or implemented by that department.~~
- (b) To be eligible for funding, a Qualified Infill Area must meet all of the following threshold requirements:
- (1) It must have a definite, described border.
  - (2) It must contain at least one Qualified Infill Project completely within its borders.

- (3) It must be subject to a public plan or ordinance adopted for the purpose of guiding development within the area. The process leading to the adoption of this plan or ordinance must have public notification as required by law and involved significant input from affected stakeholders, including potential developers. Examples of qualifying plans include specific plans, redevelopment area plans, or transit station area plans.
- (4) ~~The applicant must identify a mechanism, such as a minimum density ordinance or a recorded, binding covenant, acceptable to the Department for~~ must be subject to enforceable minimum density requirements, conditions of approval or other mechanisms requiring a minimum number of units in the Qualified Infill Area that will reliably ensure ensuring that future development will occurs at an overall Net Density equaling or exceeding that set forth in paragraph 303(a)(4) and the Net Density proposed in the application for the purposes of rating pursuant to Section ~~308-309~~ and determining the maximum grant amount pursuant to Section 305 . This mechanism must be in effect and legally enforceable prior to the disbursement of Program funds.

- (c) For applications including a Qualifying Infill Area, applicants shall designate the housing developments within the Qualifying Infill Area that the applicant intends to utilize for the purpose of establishing the maximum Program grant amount pursuant to Section 305 and for the purpose of rating applications pursuant to Section 309. Any such designated housing developments must be utilized for both purposes. ~~The application must include evidence indication that the construction of the designated housing developments will commence within five years from the deadline for Program applications set forth in the NOFA.~~

Section 308. Application Selection Criteria for Qualifying Infill Projects

Applications for Capital Improvement Projects associated with Qualifying Infill Projects shall be rated using the criteria detailed below. Applicants may elect to exclude from consideration discrete phases or portions of their developments, provided that these portions or phases are not included for other purposes under these Guidelines, including rating pursuant to this Section 308 and determining the maximum grant amount calculated pursuant to Section 305(a).

**(a) Project Readiness – 30 points Maximum**

- (1) Environmental Review Status—8 points maximum

Applications will be awarded points based on the extent to which

environmental reviews have been completed for the Qualifying Infill Project:

(A) Completion of all necessary environmental clearances, including those required under the California Environmental Quality Act and the National Environmental Policy Act and all applicable appeal-time periods for filing appeals or lawsuits have lapsed, shall receive 8 points.

(B) Issuance of a public notice of the availability of a draft environmental impact report, negative declaration, or environmental assessment, shall receive 4 points.

(C) The completion of a Phase I Site Assessment and Phase II Site Assessment (if required) within one year of prior to the application deadline specified in the NOFA and any public agency approved remediation plan, shall receive 2 points.

(2) Land Use Entitlement Status—8 points maximum

Applications will be awarded points based on the extent that the Qualifying Infill Project can secure necessary entitlements from the local jurisdiction within a reasonable period of time, as follows:

(A) Applications which demonstrate that the Qualifying Infill Project is consistent with local planning documents and zoning ordinances and applications for all necessary discretionary local approvals ~~for the Qualifying Infill Project~~ have been granted-submitted to the appropriate local agencies shall receive ~~40-3~~ 3 points.

(B) Applications which demonstrate that ~~all necessary discretionary local approvals for the Qualifying Infill Project~~ all necessary discretionary local land use approvals have been granted for the Qualifying Infill Project ~~except for the issuance of a conditional use permit, design review or other project-specific discretionary approvals~~ shall receive ~~3-8~~ 3 points.

(3) Funding Commitments—8 points maximum

Applications will be awarded points based on the extent to which the Qualifying Infill Project and Capital Improvement Project can secure sufficient funding in a timely manner, as follows:

(A) 4 points shall be awarded for obtaining enforceable commitments for all construction period funding for the Qualifying Infill Project, excluding tax credit equity, tax exempt bonds, and funding provided by another Department funding program provided that

this Department funding is awarded prior to or simultaneously with the final rating and ranking of the Program application.

- (B) 4 points shall be awarded for obtaining enforceable commitments for all construction period funding for the Capital Improvement Project, excluding funding provided by another Department funding program provided that this funding is awarded prior to or simultaneously with the final rating and ranking of the Program application.

(4) Local Support—6 points maximum

Applications will be awarded 6 points for ~~either~~any of the following:

- (A) Submission of a letter of support from the legislative body or planning department of the Locality in which the Qualified Infill Project is located; ~~or~~

- ~~(B)~~ The Qualified Infill Project is located on a site designated or identified in the housing element of the local general plan as suitable for housing development consistent with application; or

- ~~(B)(C)~~ Obtaining all discretionary local approvals and commitments for local public funding for the Qualifying Infill Project.

- ~~(D)~~ Obtaining a funding commitment or commitments from a local public agency or agencies for the Capital Improvement Project equivalent to at least 25 percent of the Program grant.

**(b) Affordability – 30 points Maximum**

Applications will be awarded points based on the percentage of units in the Qualifying Infill Project restricted to occupancy by various income groups, ~~in accordance with the following schedule. Point scores will be rounded to the nearest one hundredth point in this category:~~ [much commentary on these levels of affordability] Applicants may elect to have their applications scored in accordance with any of the three following scales. Applicants may further elect to exclude from the percentage calculation units which are not utilized in the calculation of the grant amount pursuant to Section 305(a).

- (1) The scale used by MHP, as specified in CCR Section 7320(b)(1). Applicants making this election shall be awarded 30/35 points for every 1 point they would be eligible to receive using MHP's system (so that applications eligible for the maximum possible 35 points using

the MHP scale receive the maximum possible points in this category for the Program)

(2) The scale used by TCAC to score 9% low income housing tax credit applications, under the Lowest Income point category. Applicants making this election shall be awarded 30/52 points for every 1 point they would be eligible to receive using TCAC's system (so that applications eligible for the maximum possible 52 points using the 9% scale receive the maximum possible points in this category for the Program).

(3) The following scale:

(4A) 0.13 points will be awarded for each percent of total units that are owner-occupied and restricted to initial occupancy by households with incomes not exceeding the Moderate Income limit.

(2B) 0.25-30 points will be awarded for each percent of total units that are owner-occupied and restricted to occupancy by households with incomes not exceeding the Lower Income limit.

(3C) 0.13-20 points will be awarded for each percent of total units that are rental units restricted to occupancy by households with incomes ~~less than or equal to 50% of Area Median~~ not exceeding Very Low 50% of Area Median Income.

(4D) 1 -point will be awarded for each percent of total units that are rental units restricted to occupancy by households with incomes less than or equal to 30% of Area Median Income, or that are or will be covered by a long-term, project-based rental or operating subsidy contract under a program that either has a history of predominately serving households at this income level or that by design will reliably serve this population.

(54) Owner-occupied units shall be subject to a recorded covenant that includes either a resale restriction for at least 30 years or a requirement for sharing equity upon resale.

(6) For rental Qualifying Infill Projects utilizing 9% low income housing tax credits, applicants may elect to have their rental units scored in accordance with the scoring system used for this purpose by TCAC, under the Lowest Income point category. Applicants making this election shall be awarded 30/52 points for every 1 point they would be eligible to receive using TCAC's system (so

~~that applications eligible for the maximum possible 52 points using the 9% scale receive the maximum possible points in this category for the Program).~~

~~(7) For rental Qualifying Infill Projects utilizing the Multifamily Housing Program MHP, applicants may elect to have their rental units scored in accordance with the scoring system used for this purpose by this program, under the point category specified in CCR Section 7320(b)(1). Applicants making this election shall be awarded 30/35 points for every 1 point they would be eligible to receive using the Multifamily Housing Program MHP's system (so that applications eligible for the maximum possible 35 points using the Multifamily Housing Program MHP scale receive the maximum possible points in this category for the Program).~~

(865) For rental units used as the basis for point scores in the application, rent limits for initial occupancy and for each subsequent occupancy shall be based on unit type, applicable income limit, and area in which the Qualifying Infill Project is located, following the calculation procedures used by TCAC. Rents shall will be restricted in accordance with the rent and income limits specified in the application and approved by the Department, and set forth in a legally binding agreement recorded against the Qualifying Infill Project. Rents shall not exceed 30% of the applicable income eligibility level.

**(c) Density – 20 points Maximum.**

Applications will be scored based on the extent to which the average Net Density of the Qualifying Infill Project, adjusted by unit size, exceeds the required density specified in Section 303(a)(4).

~~(1)~~ (1) Net density will be adjusted by unit size (and commercial space as applicable) as follows:

Example = Mixed-use project, ¼ acre, urban site, with 10 1-bedroom units at 800 sq. ft. each, 10 3-bedroom units at 1100 sq. ft. each, and 5000 sq. ft. of commercial space.

Based on the Density factors in the chart below, the equation looks like this:

10 x 0.9 (1 bedroom units) = 9  
10 x 1.6 (3 bedroom units) = 16

Then, to attribute density to the commercial space, utilize the square

footage and bedroom count of the largest unit in the project to determine how many whole units would fit into the square footage of the commercial space.

For our example, the largest unit is a 3-bedroom, 1100 square foot unit. 5000 square feet (commercial space) would accommodate 4 of these units. Multiply that number by the appropriate factor:

4 x 1.6 (3-bedroom units) = 6.4

To calculate the percentage at which this project meets or exceeds the required density add all three resulting calculations above, and divide by the minimum density required for your site (in this case 30 units/acre for an urban site), then by the number of acres in the project, then multiply by 100 (for percentage):

(9+16+6.4)/30 = 1.046/.75=1.3955x100=139.55%

~~Net Density will be adjusted by unit size by multiplying the factors shown below by the number of units in each unit size category, then summing the resulting products. For example, the adjusted Net Density of a development on a one-acre site with 10 0-bedroom units and 20 2-bedroom units would be 10 times 0.7 plus 20 times 1.2, or 31.~~

| Unit Size (Bedrooms) | Factor |
|----------------------|--------|
| 0-Bdrm               | 0.7    |
| 1-Bdrm               | 0.9    |
| 2-Bdrm               | 1.2    |
| 3-Bdrm               | 1.6    |
| 4-Bdrm               | 1.8    |

(2) Points will be awarded in accordance with the following schedule:

| Adjusted Net Density as a Percentage of Required Density | Points |
|--|--------|
| 150% or More   | 20     |
| 140% to 149.9%   | 15     |
| 130% to 139.9%   | 10     |
| 120% to 129.9%   | 7.5    |
| 110% to 119.9%   | 5      |
| Less than 110%   | 0      |
|  |        |

**(d) Access to Transit – 20 points Maximum**

Points will be awarded based on the proximity of the Qualifying Infill Project to a Transit Station or Major Transit Stop as follows:

- (1) 20 points will be awarded to a Qualifying Infill Project within one quarter mile of a ~~transit~~ Transit Station or Major Transit Stop measured by a walkable route from the nearest boundary of the Qualifying Infill Project to the outer boundary of the site of the Transit Stop or Major Transit Station.
- (2) 15 points will be awarded to a Qualifying Infill Project within one half mile of a Transit Station or Major Transit Stop measured by a walkable route from the nearest boundary of the Qualifying Infill Project to the outer boundary of the site of the Transit Station or Major Transit Stop.
- (3) For the purposes of this subdivision (d), “walkable route” shall mean a route which after completion of the proposed Project, shall be free of negative environmental conditions that deter pedestrian circulation, such as barriers; stretches without sidewalks or walking paths; noisy vehicular tunnels; streets, arterials or highways without regulated crossings that facilitate pedestrian movement; or stretches without lighted streets.

**(e) Proximity to Amenities – 20 points Maximum**

Applications will be awarded points based on the proximity or accessibility of the Qualifying Infill Project to the following existing amenities or amenities that will be in service when the Qualifying Infill Project is completed.

- (1) The Qualifying Infill Project is within 1/4 mile of a public park (1/2 mile for Rural Area projects) (not including school grounds unless there is a bona fide, formal joint use agreement between the jurisdiction responsible for the parks/recreational facilities and the school district providing availability to the general public of the school grounds and/or facilities), 6 points, or within 1/2 mile (1 mile for Rural Area projects), 4 points.
- (2) The Qualifying Infill Project is within 1 mile of a locally recognized employment or retail center with a minimum of fifty (50) full-time employees (2 miles for Rural Area projects), 7 points, or within 2 miles (4 miles for Rural Area projects), 4 points. An employment center is a locally recognized concentration of employment opportunities practically available to the residents of the proposed Qualifying Infill Project, such as a large hospital, industrial park, or office area. A retail center is a downtown area or recognized neighborhood or regional shopping mall.
- (3) For Qualifying Infill Projects where at least 50% of the units have two or more bedrooms, the site is within 1/4 mile of a public school or community

college that residents of the Qualifying Infill Project may attend (1/2 mile for Rural ~~set-aside~~ Area projects), 7 points, or within 1/2 mile (1 mile for Rural Area set-aside projects), 4 points.

- (4) For a Qualifying Infill Project that is a Special Needs or SRO-single room occupancy development, as defined by TCAC, or a Special Needs or Supportive Housing project, as defined under MHP, the Qualifying Infill Project is located within 1/2 mile of a social service facility that operates to serve residents of the Qualifying Infill Project, 7 points or within 1 mile, 4 points.
- (5) For a Qualifying Infill Project that is a Senior development reserved for qualified senior citizens under sections 51.2, 51.3 and 51.4 of the Civil Code, the Qualifying Infill Project is within 1/4 mile of a daily operated senior center or a facility offering daily services specifically designed for seniors (1/2 mile for Rural Area set-aside projects), 7 points or within 1/2 mile (1 mile for Rural ~~set-aside~~ Area projects), 4 points.

**(f) Consistency with Regional Plans – 10 points Maximum**

10 points will be awarded if the Qualifying Infill Project is consistent with a regional blueprint plan or other regional growth plan adopted by a regional council of governments or other authorized public agency and intended with the stated intent of ~~to~~ fostering infill development and efficient land use. Consistency with such a regional plan may be demonstrated by a letter from the council of governments confirming such consistency, evidence of consistency from the local planning department of the jurisdiction in which the Qualifying Infill Project is located, or other substantial evidence acceptable to the Department. No points will be awarded if the Qualifying Infill Project is located in an area not subject to such a regional plan, or if the Qualifying Infill Project is not consistent with it as determined by the Department.

Section 309. Application Selection Criteria for Qualifying Infill Areas

Applications for Capital Improvement Projects associated with Qualifying Infill Areas shall be awarded points using the criteria detailed below. Applicants may elect to exclude from consideration discrete phases or portions of the developments within the Qualifying Infill Area, provided that these portions or phases are not included for other purposes under these Guidelines, including rating pursuant to this Section 309 and the maximum grant amount calculated pursuant to Section 305(a).

**(a) Area Readiness –30 points Maximum**

Readiness points will be awarded as follows:

- (1) Environmental Review Status—8 points maximum

(A) Applications for Qualifying Infill Areas for which a program, master or tiered environmental impact report for which the applicable time periods to file appeals or lawsuits have lapsed has been adopted by the appropriate agency and the developments included in the application constitute subsequent projects subject to environmental review as such pursuant to CEQA Guidelines, ~~chapter~~ Chapter 3, title Title 14, CCR, commencing with section 15000, and which have received permits as required by Section 404 of the Clean Water Act (33 U.S.C. § 1344), Section 10 of the Endangered Species Act (16 U.S.C. § 1539), and the California Endangered Species Act (section 2081 of the Cal. Fish and Game Code), will receive 4-8 points.

(B) Applications for Qualifying Infill Areas for which a draft of a program, master or tiered environmental impact report has been certified by the appropriate agency and the developments included in the application will constitute subsequent projects subject to environmental review as such pursuant to CEQA Guidelines, chapter 3, title 14, CCR, commencing with section 15000, and have submitted applications for permits as required by Section 404 of the Clean Water Act (33 U.S.C. § 1344), Section 10 of the Endangered Species Act (16 U.S.C. § 1539), and the California Endangered Species Act (section 2081 of the Cal. Fish and Game Code), will receive 4 points.

~~(C)~~ (C) Applications for Qualifying Infill Areas in which not less than 50 % of the land area is on sites that have been subject to a Phase 1 ASTM site assessment within a one year ~~of prior to~~ the application due date will receive 2 points.

(2) Land Use Entitlement Status--8 points maximum

Applications will be awarded points based on the extent that developments within the Qualifying Infill Area can secure necessary entitlements from the local jurisdiction within a reasonable period of time, as follows:

(A) Applications which demonstrate that the Qualifying Infill Area is subject to a general plan, specific plan, redevelopment area plan, community plan or similar area-specific plan adopted by the Locality in which the Qualifying Infill Area is located and the housing proposed in the application is consistent with such plan

will receive 4.2 points.

(B) Applications which meet the criteria in Subparagraph (A) above and demonstrate that all necessary discretionary local approvals for not less than one third of the housing units proposed for development within the Qualifying Infill Area have been granted will receive 4.6 points.

(C) Applications which meet the criteria in Subparagraph (A) above and demonstrate that all necessary discretionary local approvals for not less than half of the housing units proposed for development within the Qualifying Infill Area have been granted ~~except for the issuance of a conditional use permit, design review or other project specific discretionary approvals will~~ receive 2.8 points.

(3) Funding Commitments—8 points maximum

Applications will be awarded points based on the extent to which the housing in the Qualifying Infill Area and the Capital Improvement Project can secure sufficient funding in a timely manner, as follows:

(A) Up to 4 points shall be awarded based on the percentage of total residential units to be developed in the Qualifying Infill Area that are in developments for which enforceable commitments have been obtained for all necessary construction period funding, in accordance with the following schedule, and excluding tax credit equity, tax exempt bonds, and funding provided by another Department funding program provided that this funding is awarded prior to or simultaneously with the final rating and ranking of the Program application.

| Percentage of Total Residential Units In Developments with Committed Construction Funding | Points     |
|---|------------|
| 70% or more   | 4.0        |
| 60% to 69.9%  | 3.5        |
| 50% to 59.9%  | 3.0        |
| 40% to 49.9%  | 2.5        |
| 30% to 39.9%  | 2.0        |
| 20% to 29.9%  | 1.5        |
| 0% to 19.9%   | <u>1.0</u> |

(B) 4 points shall be awarded for obtaining enforceable commitments for all construction period funding for the Capital Improvement

Project, excluding funding provided by another Department funding program provided that this funding is awarded prior to or simultaneously with the final rating and ranking of the Program application.

(4) Local Support—6 points maximum

Applications will be awarded six points for any one either of the following:

(A) 6 points will be awarded for sSubmission of a letter of support from the legislative body of the Locality having jurisdiction over the Qualified Infill Area.;

(B) At least 50 percent of the residential units in the Qualified Infill Area are located on a site or sites designated or identified in the housing element of the local general plan as suitable for housing development consistent with application;

(CB) -Obtaining a funding commitment or commitments from a local public agency or agencies for the Capital Improvement Project equivalent to at least 25 percent of the Program grant.

**(b) Affordability – 30 points Maximum**

Applications will be awarded points based on the percentage of units to be developed in the Qualified Infill Area that will be restricted to occupancy by various income groups, in accordance with the following schedule. Point scores will be rounded to the nearest one hundredth point in this category:

- (1) 0.25 points will be awarded for each percent of total units that are owner-occupied and restricted to ~~initial~~ occupancy by households with incomes not exceeding the Moderate Income limit.
- (2) 0.75 points will be awarded for each percent of total units that are owner-occupied and restricted to occupancy by households with incomes not exceeding the Lower Income limit.
- (3) 1.0 point will be awarded for each percent of total units that are rental units restricted to occupancy by households with incomes less than or equal to 50% of Area Median Income.
- (4) 2.0 points will be awarded for each percent of total units that are rental units restricted to occupancy by households with incomes

less than or equal to 30% of Area Median Income.

- (5) Owner-occupied units proposed for points under this category shall be subject to a recorded covenant that includes either a resale restriction for at least 30 years or a requirement for sharing equity upon resale.
- (6) For rental units used as the basis for point scores in the application, rent limits for initial occupancy and for each subsequent occupancy shall be based on unit type, applicable income limit, and area in which the Qualifying Infill Area is located, following the calculation procedures used by TCAC. Rents ~~shall~~will be restricted in accordance with the rent and income limits specified in the application and approved by the Department, and set forth in a legally binding agreement recorded against housing developments in the Qualifying Infill Area for a period of not less than 55 years. Rents shall not exceed 30% of the applicable income eligibility level.

**(c) Density – 20 points Maximum.**

Applications will be awarded points based on the extent to which the average Net Density of the Qualifying Infill Area, adjusted by unit size, exceeds the required density specified in Section 303(a)(4). Point scores will be rounded to the nearest one hundredth point in this category.

- (1) Net Density will be adjusted for unit size by multiplying the factors shown below by the total number of units in each unit size category, then summing the resulting products then dividing by the next area of all projects For a suburban three site QIA:Net Density will be adjusted by unit size by multiplying the factors shown below by the number of units in each unit size category, then summing the resulting products. For example, the adjusted Net Density of a development on a one-acre site with 10 0-bedroom units and 20 2-bedroom units would be 10 times 0.7 plus 20 times 1.2, or 34.  
Project # 1 7 2-Bedroom Units 5 3-Bedroom Units .75 Acre  
Project # 2 6 2-Bedroom Units 6 3-Bedroom Units .65 Acre  
Project # 3 9 2-Bedroom Units 5 3-Bedroom Units .50 Acre

The adjusted Net Density would be (22 2-bedroom units times 1.2 plus 16 3-bedroom units times 1.6) or 52.0. Dividing this by 20 (Suburban Minimum Density) and 1.9 acres (net area of the 3 sites) and multiplied by 100 results in an Adjusted Net Density as a Percentage of Required Density of 136.8% which yields 10

points for Density.

| Unit Size (Bedrooms) | Factor |
|----------------------|--------|
| 0-Bdrm               | 0.7    |
| 1-Bdrm               | 0.9    |
| 2-Bdrm               | 1.2    |
| 3-Bdrm               | 1.6    |
| 4-Bdrm               | 1.8    |

(2) Points will be awarded in accordance with the following schedule:

| Adjusted Net Density as a Percentage of Required Density | Points |
|--|--------|
| 150% or More   | 20     |
| 140% to 149.9%   | 15     |
| 130% to 139.9%   | 10     |
| 120% to 129.9%   | 7.5    |
| 110% to 119.9%   | 5      |
| Less than 110%   | 0      |

**(d) Access to Transit – 20 points Maximum**

Points will be awarded based on the percentage of residential units in the Qualifying Infill Area which are in developments which meet the criteria for proximity to a Transit Station or Major Transit Stop set forth in paragraph 308(d)(1) relative to the total number of housing units in the Qualifying Infill Area. 2 points will be awarded for each 10 percent of such housing units. Percentages shall be rounded off to the nearest whole ten.

**(e) Proximity to Amenities – 20 points Maximum**

Applications will be awarded points based on the amenities in the Qualifying Infill Area or within ½ mile of its boundary. Points shall be awarded based on the number of amenities per ten (10) acres in the Qualifying Infill Area.

|                                 |           |
|---------------------------------|-----------|
| 6 to 10 amenities per 10 acres: | 20 Points |
| 2 to 5 amenities per 10 acres:  | 10 Points |
| 0 to 1 amenities per 10 acres:  | 0 Points  |

(1) Amenities include:

(A) Public parks (not including school grounds unless there is a bona fide, formal joint use agreement between the jurisdiction responsible for the parks/recreational facilities and the school district providing availability to the general public of the school grounds and/or facilities).

(B) Locally recognized employment or retail centers with a minimum of fifty (50) full-time employees. An employment center is a locally recognized concentration of employment opportunities such as a large hospital, industrial park, or office area. A retail center is a downtown area or recognized neighborhood or regional shopping mall.

(C) Public schools or community colleges that residents living in the Qualifying Infill Area may attend.

(D) Social service facilities available to serve the residents living in the Qualifying Infill Area.

(E) Daily operated senior centers or facilities offering services specifically designed for seniors residing in the Qualifying Infill Area.

**(f) Consistency with Regional Plans – 10 points Maximum**

10 points will be awarded if development of the Qualifying Infill Area as proposed in the application is consistent with a regional blueprint plan or other regional growth plan adopted by a regional council of governments or other authorized public agency and intended to foster efficient land use. Consistency with such a regional plan may be demonstrated by a letter from the council of governments confirming such consistency, evidence of consistency with the regional plan from the local planning department of the jurisdiction in which the Qualifying Infill Area is located, or other substantial evidence acceptable to the Department. No points will be awarded if the Qualifying Infill Area is located in an area not subject to such a regional plan, or if the development plans for the Qualifying Infill Area is not consistent with it as determined by the Department.

ARTICLE 4. Program Operations.

Section 310. Legal Documents.

Upon the award of funds the Department shall enter into a Standard Agreement with the Recipient constituting a conditional commitment of funds. This contract shall require the parties to comply with the requirements and provisions of these Guidelines. The Standard

Agreement shall encumber funds in an amount sufficient to fund the approved project, subject to limits established in the NOFA and consistent with the application. The Standard Agreement shall contain, but not be limited to, the following as appropriate for the activity:

- (a) a description of the approved ~~project~~ Capital Improvement Project and the approved Qualifying Infill Project or Area, or both, and the permitted uses of Program funds;
- (b) provisions governing the amount, terms and conditions of the Program Grant;
- (c) provisions governing the construction work and, as applicable, the acquisition and preparation of the site of the Capital Improvement Project, and the manner, timing and conditions of the disbursement of grant funds;
- (d) the Recipient's responsibilities for the development of the approved Capital Improvement Project, including, but not limited to, construction management, maintaining of files and accounts and report submissions;
- (e) ~~p~~Provisions relating to the development, construction, affordability and occupancy of the Qualifying Infill Project supported by the Capital Improvement Project and the development, construction and occupancy of housing designated for development in the application for funding of a Qualifying Infill Area;
- (f) provisions relating to the placement on or in the vicinity of the Project site, a sign indicating that the Department has provided financing for the Capital Improvement Project. The Department may also arrange for publicity of the Department Grant in its sole discretion;
- (g) remedies available to the Department in the event of a violation, breach or default of the Standard Agreement;
- (h) requirements that the Recipient permit the Department or its designated agents and employees the right to inspect the Project and all books, records and documents maintained by the Recipient in connection with the Program Grant;
- (i) special conditions imposed as part of Department approval of the project;
- (j) terms and conditions required by federal or state law; and

- (k) other provisions necessary to ensure compliance with the requirements of the Program.

#### Section 311. Reporting Requirements

- (a) During the term of the Standard Agreement and, according to the annual deadline identified in the Standard Agreement, the Recipient shall submit, upon request of the Department, an annual performance report regarding the construction of the Capital Improvement Project and the development, construction, affordability and occupancy of housing designated for development in the application, The reports will be filed on forms provided by the Department.
- (eb) At any time during the term of the Standard Agreement, the Department may perform or cause to be performed a financial audit of any and all phases of the Recipient's Project. At the Department's request, the Recipient shall provide, at its own expense, a financial audit prepared by a certified public accountant.

#### Section 312. Performance Requirement

- (a) Program funds must be disbursed in accordance with deadlines specified in the Standard Agreement, and in no event later than February 1, 2012.
- (b) The housing units to be developed in the Qualifying Infill Project and the housing designated in the application for a Qualifying Infill Area must be completed, as evidenced by receipt of a certificate of occupancy, within a reasonable period of time as set forth in the Standard Agreement, not more than 8 years from the date of the award of the Program grant.

#### Section 313. Defaults and Cancellations

- (a) In the event of a breach or violation by the Recipient of any of the provisions of the Standard Agreement, the Department may give written notice to the sponsor to cure the breach or violation within a period of not less than 15 days. If the breach or violation is not cured to the satisfaction of the Department within the specified time period, the Department, at its option, may declare a default under the Standard Agreement and may seek legal remedies for the default including the following:
  - (1) The Department may seek, in a court of competent jurisdiction, an order for specific performance of the defaulted obligation or the

appointment of a receiver to complete the Project in accordance with Program requirements.

- (2) The Department may seek such other remedies as may be available under the relevant agreement or any law.
- (b) Funding commitments and Standard Agreements may be canceled by the Department under any of the following conditions:
  - (1) The objectives and requirements of the Program cannot be met by continuing the commitment or Standard Agreement;
  - (2) Construction of the Capital Improvement Project cannot proceed in a timely fashion in accordance with the timeframes established in the Standard Agreement;
  - (3) funding conditions have not been or cannot be fulfilled within required time periods.
- (c) Upon receipt of a notice of intent to cancel the Grant from the Department, the Recipient shall have the right to appeal to the Director of the Department.

#### Section 314. Prevailing Wages

A grant under the Program shall be considered public funding for the purposes of State Prevailing Wage Law subject to the provisions of that statute. The funding of a Capital Improvement Project under the Program shall not necessarily, in and of itself, be considered public funding of a Qualified Infill Project or a Qualified Infill Area. Although the use of Program funds does not require compliance with federal Davis Bacon wages, other funding sources may require compliance with federal Davis Bacon wages.