

# Transit-Oriented Development Housing Program

## Round 4 Guidelines



**Gavin Newsom, Governor  
State of California**

**Lourdes M. Castro Ramírez, Secretary  
Business, Consumer Services and Housing Agency**

**Douglas R. McCauley, Acting Director  
California Department of Housing and Community Development**

2020 West El Camino Avenue, Suite 500  
Sacramento, CA 95833  
TOD Program Email: [TOD@hcd.ca.gov](mailto:TOD@hcd.ca.gov)

**April 30, 2020**

## Contents

<b>Article 1. General.....</b>	<b>1</b>
Section 100. Purpose and Scope .....	1
Section 101. Program Overview .....	1
Section 102. Definitions .....	2
<b>Article 2. Program Requirements.....</b>	<b>10</b>
Section 103. Eligible Projects .....	10
Section 104. Eligible Applicant .....	11
Section 105. Eligible Costs .....	12
Section 106. Assistance Terms and Limits .....	13
Section 107. Performance Requirements .....	15
<b>Article 3. Application Procedures .....</b>	<b>17</b>
Section 108. Application Process .....	17
Section 109. Application Threshold Requirements .....	17
Section 110. Application Selection Criteria .....	20
<b>Article 4. Program Operations .....</b>	<b>27</b>
Section 111. Legal Documents .....	27

## **Article 1. General**

### **Section 100. Purpose and Scope**

- (a) These Round 4 Transit-Oriented Development Housing Program Guidelines (“Guidelines”) implement and interpret Part 13 (commencing with Section 53560) of Division 31 of the Health and Safety Code (HSC), which establishes the Transit-Oriented Development Implementation Program (“TOD,” “Program,” or “TOD Housing Program”). The Program is administered by the California Department of Housing and Community Development (the “Department”).
- (b) These Guidelines establish terms, conditions, and procedures for funds awarded through the Notice of Funding Availability (“NOFA”) that references these Guidelines.
- (c) The Uniform Multifamily Regulations (Cal. Code Regs., tit. 25, § 8300 et seq.) (the “UMRs”), effective November 15, 2017, and as subsequently amended, are hereby incorporated by reference. In the event of a conflict between the UMRs and these Guidelines, the provisions of these Guidelines are controlling.
- (d) The Multifamily Housing Program Final Guidelines (the “MHP Guidelines”), effective June 19, 2019, and as subsequently amended, are hereby incorporated by reference. In the event of a conflict between any of the MHP Guidelines and these Guidelines, the provisions of these Guidelines are controlling.

### **Section 101. Program Overview**

The TOD Housing Program is funded by Proposition 1, the Veterans and Affordable Housing Bond Act of 2018. Its primary objectives are to increase the overall supply of housing, increase the supply of affordable housing, increase public transit ridership, and minimize automobile trips. The Program seeks to accomplish these objectives by providing financial assistance for the development of housing and related infrastructure near public Transit Stations.

These Guidelines shall apply to any future NOFA and funding released thereunder (including Proposition 1 and Proposition 1C).

Under the Program, low-interest permanent Loans are available as gap financing for Rental Housing Developments. In addition, Grants are available for infrastructure improvements necessary for the development of specified Housing Developments, or to facilitate connections between these developments and the Transit Station.

The basic structure of the TOD Housing Program borrows heavily from existing State of California housing programs. For rental development, it is patterned after the Multifamily Housing Program, but without the emphasis on large family units or special needs populations. For Infrastructure Projects, the model is the Infill Infrastructure Grant Program of 2019.

Funds will be allocated through a competitive process, based on the merits of individual development projects. The application selection criteria reflect traditional concerns of publicly funded housing programs, such as affordability and Project readiness, and the extent to which developments realize the Program's objectives of reducing auto trips and increasing transit ridership.

## **Section 102. Definitions**

The following definitions, as well as the definitions found in the UMRs and the MHP Guidelines, apply to these Guidelines and the Program. In the event of a conflict, the following definitions are controlling.

- (a) "Affordable Unit" means a unit that is made available at an affordable rent, as defined in Health and Safety Code section 50053, to a household earning no more than 60 percent of the Area Median Income or at an affordable housing cost, as defined in Health and Safety Code section 50052.5, to a household earning no more than 120 percent of the Area Median Income. Rental units shall be subject to a recorded covenant ensuring affordability for a duration of at least 55 years. Ownership units shall initially be sold to and occupied by a qualified household and shall be subject to a recorded covenant that includes either a resale restriction for at least 30 years or equity sharing upon resale.
- (b) "Applicant" means a Developer that submits an application to the Department to develop a Rental Housing Development, and/or a Locality which submits an application to develop an Infrastructure Project, and/or a transit agency which submits an application to the Department to develop an Infrastructure Project.
- (c) "Area Median Income" or "AMI" means the most recent applicable county median family income published by the California Tax Credit Allocation Committee (TCAC).
- (d) "Assisted Units" means a unit that is subject to the Program's rent and/or occupancy restrictions as a result of the financial assistance provided by the Program, as specified in the Regulatory Agreement.
- (e) "Bus Hub" means an intersection of three or more bus routes, with a minimum route headway of 15 minutes during Peak Hours.
- (f) "Bus Rapid Transit" ("BRT") means a rubber-tired form of rapid transit in an integrated system of facilities, equipment, services, and amenities that exceed the speed and reliability of regular bus service. BRT usually includes use of dedicated rights-of-way, including busways, exclusive lanes, and bypass/queue jumping lanes for buses at congested intersections to reduce vehicle running time, and typically includes a combination of the following additional features: (1) center of road alignment, mixed traffic prohibitive intersection treatments; (2) use of more limited-stop service, including express service and skip-stopping; (3) application of Intelligent Transportation Systems (ITS) technology, such as signal

priority, automatic vehicle location systems, system security, and customer information; (4) platform level boarding; and (5) off-board fare collection.

- (g) “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.
- (h) “CCR” means the California Code of Regulations.
- (i) “Covenant” means an instrument which restricts the development, use, and occupancy of the Housing Development, and which is recorded against the fee interest underlying the Housing Development. The Covenant is executed as consideration for the TOD Program Grant to the Recipient pursuant to Section 111(b)(3).
- (j) “Currently Developed” means that the land in question is altered by paving, construction, and/or land use that would typically have required regulatory permitting to have been initiated.
- (k) “Department” means the California Department of Housing and Community Development.
- (l) “Destination Transit Station” means a Transit Station located not more than 30 minutes from the Qualifying Transit Station that serves the Housing Development via public transit and involves no more than one transfer point.
- (m) “Developer” means the legal entity that the Department relies upon for capacity, experience, and Site Control, and which controls the Rental Housing Development during development and through occupancy.
- (n) “Disbursement Agreement” means the agreement which controls the disbursement of Program Funds. The Disbursement Agreement is executed by the Recipient(s) and the Department pursuant to Section 111(b)(2).
- (o) "Eligible Households" means households whose incomes do not exceed 60 percent of AMI, calculated in accordance with the regulations and procedures governing the low-income housing tax credit program, as administered by TCAC.
- (p) “Enforceable Funding Commitment” means permanent financing commitments, including, but not limited to, the following:
  - (1) Low-income housing tax credit equity contributions will be considered an enforceable funding commitment in this calculation only if there is a proof of allocation from TCAC.
  - (2) Funds awarded or conditionally reserved by the Department at the time of application submittal.

- (3) A land donation in fee for no other consideration that is supported by an appraisal and/or purchase/sale agreement, or some other instrument of title transfer (“Land Donation”), or a local fee waiver resulting in quantifiable cost savings for the Project where those fees are not otherwise required by federal or state law (“Local Fee Waiver”), may be considered a funding commitment. The value of the Land Donation will be the greater of either the original purchase price or the current appraised value as supported by an independent third-party appraisal prepared by a Member Appraisal Institute-qualified appraiser within one year prior to the application deadline. A funding commitment in the form of a Local Fee Waiver must be supported by written documentation from the Local Public Agency.
- (4) Owner equity contributions or developer funds. Such contributions or funds shall not be subsequently substituted with a different funding source or forgone if committed in the application, except that a substitution may be made for up to 50 percent of deferred developer fee. The Department may require the Applicant to evidence the availability of the proposed amount of owner equity or developer funds.
- (5) Funds for transportation projects which are programmed for allocation and expenditure in the applicable Project plan consistent with the terms and timeframes of the Standard Agreement.
- (q) “Floor Area Ratio” (“FAR”) means the square footage of the floor area of a building divided by the site square footage, excluding therefrom dedicated streets, sidewalks, Parks and Open Space. The floor area of a building is the sum of the gross area of each floor of the building, excluding mechanical space, cellar space, floor space in open balconies, and elevators or stair bulkheads. Multiplying the FAR by the area of the site produces the minimum amount of floor area required in a building on the lot. For example, on a 10,000 square-foot site in a district with a minimum FAR of 1.5, the floor area of a building must be at least 15,000 square feet.
- (r) “Grant” means funds awarded to a Locality or transit agency Applicant for eligible Infrastructure Project costs as defined in Section 105(c).
- (s) “Infill Site” means a site where at least three of four sides, or 75 percent of the perimeter of the site, adjoin(s) parcels that are Currently Developed qualified Urban Uses. This calculation shall not include perimeters bordering navigable bodies of water and improved Parks. In order to qualify as an Infill Site, the site must also be located in an Urbanized Area.
- (t) “Infrastructure Project” means a proposed improvement meeting the criteria of Section 103(c).
- (u) “Key Destinations” means vital community amenities and resources including banks, post offices, grocery stores which meets the CalFresh program

requirements, licensed child care facilities, medical clinics that accepts Medi-Cal payments, office parks , parks accessible to the general public, pharmacies, places of worship, public schools, public libraries, and colleges or universities medical centers, schools, grocery stores, child care centers, pharmacies, public Parks, or public libraries. Key Destinations must be operational at the time of application.

- (v) “Large City Downtown” means an area designated as a downtown, central business district, or core area in local planning documents in one of the following cities: Anaheim, Bakersfield, Fresno, Long Beach, Los Angeles, Oakland, Riverside, Sacramento, San Diego, San Francisco, San Jose, Santa Ana, and Stockton. These are the largest California cities according to California Department of Finance data.
- (w) “Loan” means funds awarded for eligible Rental Housing Development costs as defined in Section 105(b).
- (x) “Local Public Agency” or “Locality” means a California city, county, or city and county.
- (y) “Manager’s Unit” means a unit in which the onsite manager of the Project resides. A Manager’s Unit will not be considered to be an Assisted Unit, nor will it be considered to be a Restricted Unit for the purpose of calculating allowable distributions. A Manager’s Unit will be considered to be a Restricted Unit for the purpose of allocating development costs and may qualify for a loan amount up to the amount applicable to the 60 percent of AMI level.
- (z) “Micromobility” means modes of transportation utilized individually and intended to address the “first mile/last mile” gap, often to or from another mode, by providing very light vehicles, such as docked and dockless bikeshare systems, electric bikes, and/or electric scooters on a short-term basis.
- (aa) “Mixed Use Development” means a building, combination of buildings, or building complex, designed to functionally and physically integrate non-residential uses such as retail, commercial, institutional, recreational, or community uses with residential uses, in a complementary manner.
- (bb) “MHP” shall mean the Multifamily Housing Program authorized and governed by Chapter 6.7 (commencing with Section 50675) of Part 2 of Division 31 of the Health and Safety Code and administered in accordance with the MHP Guidelines.
- (cc) “Net Density” means the total number of dwelling units per acre of land to be developed for residential or mixed use, excluding allowed deductible areas. Allowed deductible areas are public dedications of land which are for public streets, public sidewalks, public Open Space, and public drainage facilities. Areas that are not deductible include utility easements, setbacks, private drives and walkways, general landscaping, common areas and facilities, off street

parking, and traditional drainage facilities exclusive to a development project. Mitigations required for development will not be included in the allowed deductible areas.

- (dd) “NOFA” means a Notice of Funding Availability for the Program issued by the Department.
- (ee) “Open Space” means a parcel or area of land or water that is essentially unimproved and dedicated to one or more of the following purposes: (1) the preservation of natural resources; (2) the managed production of resources; (3) public and/or residential outdoor recreation; or (4) public health and safety.
- (ff) “Opportunity Zone” means an economic development tool that is intended to spur economic development in distressed communities. An Opportunity Zone is a census tract that has been designated by the United States Treasury as an Opportunity Zone.
- (gg) “Parks” means a facility that provides benefits to the community and includes, but is not limited to, places for organized team sports, outdoor recreation, and informal turf play; non-motorized recreational trails; permanent play structures; landscaping; community gardens; places for passive recreation; multipurpose structures designed to meet the special recreational, educational, vocational, and social needs of youth, senior citizens, and other population groups; recreation areas created by the redesign and retrofit of urban freeways; community swim centers; regional recreational trails; and infrastructure and other improvements that support these facilities.
- (hh) “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.
- (ii) “Program” means the TOD Housing Program as implemented by these Guidelines.
- (jj) “Project” means a Housing Development or an Infrastructure Project or a combination of the two. A Project may consist of a portion or phase of a larger development. The provisions of these Guidelines shall apply only to the Project as designated by the Applicant in the application for Program funds.
- (kk) “Qualified Employment Area” means an area that contains at least 2,500 employees and is within a half-mile radius of a Destination Transit Station. A Qualified Employment Area is determined by utilizing the instructions provided for the mapping and reporting data accessible through the following link:  
<http://onthemap.ces.census.gov/>.
- (ll) "Qualifying Transit Station" means the Transit Station identified in the application to be within one-quarter mile of the Housing Development.



- (mm) “Recipient” means the eligible Applicant receiving a commitment of Program funds.
- (nn) “Regulatory Agreement” means the contract entered into between the Department and a Sponsor pursuant to Section 111(a)(2).
- (oo) “Rent” means the same as “gross rent,” as defined in the Internal Revenue Code (26 USC 42(g)(2)(B)). It includes all mandatory charges, other than deposits, paid by the tenant for the use and occupancy of an Assisted Unit, plus a utility allowance established in accordance with TCAC Regulations. For units assisted under the U.S. Department of Housing and Urban Development (HUD) Section 8 or similar rental subsidy program, Rent includes only the tenant contribution portion of the contract rent.
- (pp) “Rental Housing Development” or “Housing Development” means a proposed development meeting the criteria of Section 103(a). A Rental Housing Development is a structure or set of structures with common financing, ownership, and management, and which collectively contain five or more dwelling units, including efficiency units. No more than one of the dwelling units may be occupied as a primary residence by a person or household who is the owner of the structure or structures.
- (qq) “Restricted Unit” means the same as that term is defined in UMR Section 8301 excluding units restricted at levels above 60 percent of AMI.
- (rr) “Secure Overnight Bicycle Parking” means bicycle parking that is not accessible to the general public, is completely enclosed and protects the bicycle from inclement weather and allows for the bicycle frame to be secured to the bicycle rack at two points. Examples of Secure Overnight Bicycle Parking include bicycle rooms, bicycle lockers, and bicycle cages.
- (ss) “Site Control” means the Applicant has control of the Project site through one or more of the following:
- (1) Fee title;
  - (2) A leasehold interest on the property with provisions that enable the lessee to make improvements on and encumber the property, provided that the terms and conditions of any proposed lease shall permit, prior to Program award funding, compliance with all Program requirements;
  - (3) An enforceable option to purchase or lease which shall extend through the anticipated date of the Program award as specified in the NOFA;
  - (4) An executed disposition and development agreement or irrevocable offer of dedication to a public agency;

- (5) A right of way or easement, which is either perpetual or of sufficient duration to meet Program requirements, and which allows the Applicant to access, improve, occupy, use, maintain, repair, and alter the property underlying the right of way or easement;
  - (6) An executed encroachment permit for construction of improvements or facilities within the public right of way or on public land;
  - (7) An executed agreement with a public agency that gives the Applicant exclusive rights to negotiate with the agency for the acquisition of the site; provided that the major terms of the acquisition have been agreed to by all parties;
  - (8) A land sales contract or enforceable agreement for the acquisition of the property; or
  - (9) Other forms of Site Control that give the Department assurance (equivalent to 1- 8 above) that the Applicant will be able to complete the Project in a timely manner and in accordance with all requirements of the Program.
- (tt) “Sponsor” means the following:
- (1) A Sponsor shall be any individual, joint venture, partnership, limited partnership, trust, corporation, limited liability company, local public entity, duly constituted governing body of an Indian reservation or Rancheria, or other legal entity, or any combination thereof which meets the requirements of provision (3), below.
  - (2) A Sponsor shall be organized on a for-profit, including limited profit, or nonprofit basis.
  - (3) In order to be eligible for funding, a Sponsor must provide evidence that it has capacity and experience, and it must demonstrate ongoing control of the Housing Development through control of the borrowing entity.
    - (A) A Sponsor with capacity has the present ability, competency, workforce, and resources to develop and own the proposed Housing Development in accordance with the Program requirements.
    - (B) A Sponsor with experience has substantial and successful experience in developing and owning affordable rental housing.
  - (4) If the Sponsor is a joint venture, and qualifies as an eligible Sponsor under the preceding subsections based on the capacity and experience of only one joint venture partner, that partner must have a controlling interest in

the joint venture and a substantial and continued role in the Project's ongoing operations, as evidenced in the documents governing the joint venture.

- (uu) "Standard Agreement" means the contract entered into between the Department and a Recipient pursuant to Section 111.
- (vv) "Substantial Rehabilitation" means a Housing Development with reasonable rehabilitation construction contract costs of at least \$38,000 per assisted residential unit. Rehabilitation may include energy efficiency upgrades. Rehabilitation projects must fully and efficiently address all of the physical needs of the Project for the term of the project Loan and, therefore, merely meeting the minimum threshold cost amount of \$38,000 per residential unit may not, in and of itself, be sufficient to be considered Substantial Rehabilitation for purposes of the Project Loan.
- (ww) "TCAC" means the California Tax Credit Allocation Committee.
- (xx) "Transit Station" means a rail or light-rail station, ferry terminal, Bus Hub, or Bus Transfer Station.
- (yy) "Urban Center" means an area other than a Large City Downtown and which is served by more than one mode of transit.
- (zz) "Urban Service Area" means the area within the Urban Service Boundary that is designated for urban development. "Urban Service Boundary" means a designated limit to the urban development (in relation to the cities and unincorporated communities of the county).
- (aaa) "Urban Uses" means any residential, commercial, industrial, public institutional, transit or transportation passenger facility, retail use, or any combination of those uses. Urban uses do not include lands used for agricultural uses or parcels in excess of 15,000 square feet in size and containing only one single-family residence.
- (bbb) "Urbanized Area" means an incorporated city or an urbanized area or urban cluster as defined by the United States Census Bureau. For unincorporated areas outside of an urban area or urban cluster, the area must be within a designated Urban Service Area that is designated in the local general plan for urban development and is served by the public sewer and water.

## Article 2. Program Requirements

### Section 103. Eligible Projects

To be eligible for funding under the Program, a Project must consist of either, or both, a Housing Development or an Infrastructure Project meeting the following criteria:

- (a) A Housing Development must:
- (1) Consist of new construction or Substantial Rehabilitation of residential dwelling units, or the conversion of one or more nonresidential structures to residential dwelling units, with a total of not fewer than 20 such units.
  - (2) Be located:
    - (A) Within one-quarter mile from a Qualifying Transit Station, measured in a straight line from the nearest boundary of the Housing Development parcel to the outer boundary of the Transit Station site; and
    - (B) Within one-half mile from a Qualifying Transit Station, measured from the nearest boarding point of the Qualifying Transit Station to the entrance of the residential structure in the Housing Development farthest from the Transit Station along a walkable route. The walkable route, 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; stretches without shade or cover; or stretches without lighted streets.
  - (3) Include at least 15 percent of the total residential units as Affordable Units.
  - (4) Have a minimum Net Density, upon completion of the Housing Development, not less than that shown on the following table:

Project Location Designation	Minimum Net Density Requirements	
	Residential Only Projects	Mixed-use Project (FAR)
Large City Downtown	60 Units/Acre	>3.0
Urban Center	40 Units/Acre	>2.0
All Other Areas	25 Units/Acre	>1.5

Mixed-use Housing Developments may demonstrate consistency with the Net Density requirements through either the unit per acre or FAR requirements detailed in the table above.

- (b) Housing Developments may:
  - (1) Include residential units that are rented; and
  - (2) Include nonresidential uses that are compatible.
- (c) Infrastructure Projects may benefit residential and mixed-use development not included in the Housing Development, but the Infrastructure Project must be necessary for the development of the identified Housing Development or facilitate connections between the Housing Development and the Qualifying Transit Station. Infrastructure Projects must include one or more of the following:
  - (1) Capital improvements required by a local governmental entity, transit agency, or special district as a condition for the development of the Housing Development, such as sewer or water system upgrades, streets, construction of drainage basins, utility access, connection or relocation, and noise mitigation.
  - (2) Capital improvements that clearly and substantially enhance public pedestrian or bicycle access from one or more specifically identified Housing Developments to the Qualifying Transit Station, such as pedestrian walkways, plazas, or mini-parks, signal lights, streetscape improvements, security enhancements, bicycle lanes, intelligent transportation, and information systems.

**Section 104. Eligible Applicant**

- (a) Eligible Applicants include Developers, Localities, and transit agencies that meet the application threshold requirements under Section 109.

Applicant(s) shall be as set forth below:

Project Type(s)	Required Applicant(s)
Rental Housing Development	Eligible Developer(s) of the proposed Housing Development.
Infrastructure Project	The Locality in which the proposed Project is to be located, or a public transit agency.
Housing Development and Infrastructure Project	Eligible Developer(s) of the proposed Housing Development, and the Developer of the Infrastructure Project (either the Locality in which proposed Infrastructure Project is to be located, or a public transit agency), as joint Applicants.

Localities receiving an award of Infrastructure Project funds may contract with private entities for the development and construction of all or a portion of the improvements included in the Infrastructure Project, provided that such contractual arrangement shall ensure compliance with all applicable requirements of the Program. Joint Applicants for the Project will be held jointly and severally liable for the completion of the Project.

A Recipient of Department funds must remain liable for performing all requirements of the award of funds as set forth in the Standard Agreement. Where there are multiple Recipients, all such Recipients must remain jointly and severally liable to the Department for that performance. Notwithstanding the foregoing, Recipients may, at their sole and absolute discretion, enter into separate side indemnification agreements with one another. In no event will any such agreement alter, amend, or revoke each individual Recipient's obligations or responsibility to the Department, or its joint and several liability under the program.

### **Section 105. Eligible Costs**

- (a) All Project costs must be reasonable and necessary, as determined by the Department.
- (b) Eligible costs for Rental Housing Developments are as specified in MHP Guidelines Sections 7304.
- (c) Eligible costs for Infrastructure Projects include:
  - (1) The creation, development, or rehabilitation of Parks or Open Space;
  - (2) Water, sewer, or other utility service improvements and relocation;
  - (3) Street, road, and bridge construction and improvement;
  - (4) Required replacement of Transit Station parking spaces, not to exceed \$50,000 per space;
  - (5) Transit linkages and facilities, including, but not limited to, related access plazas or pathways, or bus and transit shelters;
  - (6) Facilities that support pedestrian or bicycle transit;
  - (7) Traffic mitigation devices, such as street signals;
  - (8) Site clearance, grading, preparation and demolition;
  - (9) 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, including shade structures, seating, landscaping, streetscaping, public safety improvements, and

public art. Program funding for public art may not exceed 5 percent of the total Program award for the Infrastructure Project;

- (10) Storm drains, stormwater detention basins, culverts, and similar drainage features;
  - (11) Environmental remediation required for the development of the Infrastructure Project, where the cost of the remediation does not exceed 50 percent of the total Program award for the Infrastructure Project;
  - (12) Site acquisition or control for the Infrastructure Project including, but not limited to, easements and rights of way. Such costs must be deemed reasonable in the Department's sole and absolute discretion and demonstrated by documentation that may include appraisals, purchase contracts, or any other documentation as determined by the Department;
  - (13) Other capital asset costs approved by the Department and required as a condition of local approval for the Infrastructure Project; and
  - (14) Impact fees required by local ordinance are eligible for Program funding only if used for the identified Infrastructure Project. Funded impact fees may not exceed 5 percent of the Program award for the Infrastructure Project.
- (d) The following costs are not eligible for Infrastructure Projects:
- (1) Parking spaces and structures, except as provided in Section 105 (c)(4).
  - (2) Costs of site acquisition for housing and mixed-use structural improvements.
  - (3) Costs of housing or mixed-use structures.
  - (4) Soft costs related to ineligible costs.
  - (5) In-lieu fees for local inclusionary programs.
  - (6) Purchasing transit-related vehicles or vehicles used for supportive services (i.e., busses, ferries, train cars, or single-occupancy vehicles).
  - (7) Costs related to capital improvements to public or private schools.

## **Section 106. Assistance Terms and Limits**

The maximum Program Rental Housing Development Loan ("TOD Loan") amount awarded for a single Housing Development or to a single Applicant, including any affiliates of such Applicant, will be \$10 million. The maximum Program Infrastructure Project Grant ("TOD Grant") awarded to a Locality or

transit agency Applicant will be \$5 million. The total maximum award amount for a single Project is \$15 million.

- (a) Loans for Rental Housing Developments, or the rental portions of a Housing Development, are subject to the following terms:
  - (1) Program funds will be provided as a Loan for permanent financing by the Department to the Developer of the Housing Development, with the same financing terms and conditions as set forth in MHP Guidelines Section 7308.
  - (2) The maximum Loan amount shall be calculated pursuant to MHP Guidelines Section 7307 based on the number of Restricted Units in the Housing Development, affordability, unit sizes, location, and on the base amount for Loan calculation as specified in the Program NOFA.
  - (3) Use of multiple Department funding sources (as defined in MHP Guidelines Section 7302(h)) on the same Assisted Units (i.e., subsidy stacking) is prohibited.
  - (4) Rental Housing Developments supported by the Infrastructure Project shall be subject to a recorded Covenant ensuring affordability for a duration of at least 55 years.
  - (5) For Rental Housing Developments, rent limits for initial occupancy and for each subsequent occupancy of Assisted Units pursuant to MHP Guidelines Section 7312, shall be based on unit type, applicable income limit, and area in which the Project is located, following the calculation procedures used by TCAC for purposes of application scoring as well as the income limits set forth above. Rents will be further restricted in accordance with Rent and income limits submitted by the Sponsor in its application for the Program Loan, approved by the Department, and set forth in the Regulatory Agreement. Rents shall not exceed 30 percent of the applicable income eligibility level. The maximum Rent shall be 30 percent of 60 percent of AMI for the appropriate unit size.
- (b) Grants for Infrastructure Projects shall be subject to the following terms:
  - (1) The Grant shall be repaid to the Department if all necessary and discretionary land use approvals have not been received for the Housing Development within two years of the date of the Program award.
  - (2) The total Grant amount shall be limited to \$35,000 per residential unit in the proposed Housing Development, and \$50,000 per Restricted Unit.
  - (3) The Applicant must demonstrate that the Grant does not result in Developers benefiting from the Infrastructure Project Grant 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.

- (4) The Department shall not make the first disbursement of Program funds until it has received satisfactory documentation of all required public agency entitlements for the Housing Development and Infrastructure Projects, and all permanent funding commitments for the Housing Development supported by the Infrastructure Project. If the Housing Development includes multiple phases or developments, the Department must receive satisfactory documentation of all entitlements and funding commitments for the first phase prior to the first disbursement of Program funds.
- (5) Funds will be disbursed as progress payments for eligible costs paid or incurred.

### **Section 107. Performance Requirements**

- (a) Recipients shall, within the time set forth in the Standard Agreement, but not more than two years from the date of the Program award, begin construction of the housing units which were used as the basis for calculating the Program award.
  - (1) The Department may approve an extension to the commencement of construction milestone deadline if the Recipient demonstrates, to the satisfaction of the Department, that the Project will meet maximum disbursement deadlines specified in the Standard Agreement, provided the extension does not exceed the appropriation liquidation date.
- (b) Recipients shall, within the time set forth in the Standard Agreement, but not more than 4.5 years from the date of the Program award, complete construction of the housing units which were used as the basis for calculating the Program award. Completion of construction must be evidenced by a certificate of occupancy or equivalent documentation.
  - (1) The Department may approve an extension to the completion of construction milestone deadline if the Recipient demonstrates, to the satisfaction of the Department, that the Project will meet maximum disbursement deadlines specified in the Standard Agreement, provided the extension does not exceed the appropriation liquidation date.
- (c) The Standard Agreement and Disbursement Agreement must be executed within two years from the date of award. Failure to meet this requirement may result in the Department's recapture of the Grant funds awarded.

- (d) Program funds must be disbursed in accordance with the deadlines specified in the Standard Agreement, and in no event later than the following disbursement deadlines:
  - (1) Program funds must be fully disbursed within 4.5 years from the date of award, or, if an extended disbursement deadline is approved, the later disbursement deadline date.
  - (2) The maximum disbursement extension deadline is seven years from the date of award. The Department may approve a disbursement extension deadline request up to the applicable maximum disbursement extension deadline if the Recipient demonstrates, to the satisfaction of the Department, that it has complied with performance milestones identified in the Standard Agreement.
- (e) Recipients may be required to repay disbursed Program Grant funds where the construction of residential units used as the basis for calculating the Grant amount pursuant to Section 106(b) has not commenced construction within two years from the date of the Program Grant award. The amount to be repaid shall be proportionate to the number of designated residential units that are out of compliance with Section 107(a).

## **Article 3. Application Procedures**

### **Section 108. Application Process**

- (a) The Department shall offer funds through a NOFA that specifies, among other things, amount of funds available, application requirements, tiebreaker criteria, the deadline for submittal of applications, the schedule for rating and ranking applications and awarding funds, and the general terms and conditions of funding commitments.
- (b) Applications shall be made on forms made available by the Department.
- (c) The Department shall evaluate applications for compliance with the threshold requirements listed in Section 109 and score them based on the application selection criteria listed in Section 110. 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 to meet the following geographic distribution objectives:
  - (1) Awarding not less than 45 percent of funds to Southern California Projects (those located in Kern, San Bernardino, San Luis Obispo, Santa Barbara, Ventura, Los Angeles, Orange, Riverside, San Diego or Imperial Counties); and
  - (2) Awarding not less than 30 percent of funds to Northern California Projects (those not located in the counties specified in the previous subsection).
  - (3) Awarding not less than 50 percent of funds to Projects served by Qualifying Transit Stations not served by heavy rail (e.g. BART and Metro Red Line).
- (d) 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. In the event of two or more applications having the same rating and ranking scores, the Department will apply the tie-breaking criteria outlined in the NOFA.
- (e) Applications selected for funding shall be approved subject to special conditions specified by the Department.

### **Section 109. Application Threshold Requirements**

- (a) Applications for Program funding of Housing Developments must, upon the application due date, meet the following threshold requirements:
  - (1) The Housing Development must be eligible pursuant to Section 103(a) and the Applicant must be eligible pursuant to Section 104(a).

- (2) All proposed uses of Program funds must be eligible pursuant to Sections 105 and 106.
- (3) The application must be sufficiently complete to assess Project feasibility and compliance with Program requirements.
- (4) As of the application due date, construction of the Housing Development must not have commenced except for emergency repairs to existing structures that are necessary to mitigate documented hazards or threats to health and safety.
- (5) The Housing Development must be located in a Locality with an adopted housing element that has been found by the Department to be in substantial compliance with the requirements of California's Housing Element Law (Gov. Code, § 65580 et seq.) at time of application.
- (6) The Housing Development must be located in a Locality that, at the time of application, has submitted its housing element annual progress reports as required by Government Code Section 65400 to the State of California for the current or prior reporting year.
- (7) The Housing Development must be infeasible without Program funds, and the Program funds cannot be supplanting other available funds.
- (8) The Housing Development must be proposed on an Infill Site as defined in Section 102.
- (9) Rental Housing Developments must meet the underwriting standards in the UMRs.
- (10) The Applicant must have Site Control as defined in Section 102.
- (11) The Applicant must demonstrate the following experience:
  - (A) For Rental Housing Developments, the Applicant must provide evidence that it has completed at least two projects that are similar to the proposed Housing Development Project in scope and size during the five years preceding the application due date.
  - (B) For Infrastructure Projects, the Applicant must provide evidence that it has completed at least two projects that are similar to the proposed Infrastructure Project in scope and size during the 10 years preceding the application due date.
- (12) The Applicant must demonstrate that it has the capacity (i.e., the present ability, competency, workforce, and resources) to develop and own the proposed Housing Development in accordance with the Program requirements.

- (13) Proposed projects involving new construction and requiring the demolition of existing residential units are eligible only if the number of bedrooms in the new Project is at least equal to the total number of bedrooms in the demolished structures. The new units may exist on separate parcels provided all parcels are part of the same Rental Housing Development meeting the requirements of Section 8303(b).
- (b) Applications for Program funding of Infrastructure Projects must, upon the application due date, meet the following threshold requirements:
- (1) The Applicant must be eligible pursuant to Section 104(a).
  - (2) The Infrastructure Project must be eligible under Section 103(c).
  - (3) The Infrastructure Project must support a Housing Development that meets the criteria of Section 103(a).
  - (4) All proposed uses of Program funds must be eligible pursuant to Sections 105 and 106.
  - (5) Construction of the Infrastructure Project and the supported Rental Housing Development must not have commenced as of the application due date.
  - (6) The Infrastructure Project and the associated Housing Development must be infeasible without the requested Program funds, and the Program funds cannot be supplanting other available funds.
  - (7) The Developer of the supported Rental Housing Development(s) must have Site Control.
  - (8) The Infrastructure Project must be located in a Locality with an adopted housing element that has been found by the Department to be in substantial compliance with the requirements of California's Housing Element Law (Gov. Code, § 65580 et seq.) at time of application.
  - (9) The Infrastructure Project must be located in a Locality that, at the time of application, has submitted its housing element annual progress reports as required by Government Code section 65400 to the State of California for the current or prior reporting year.
  - (10) The application must be sufficiently complete to assess Project feasibility and compliance with Program requirements. If the Project type includes both an Infrastructure Project and a Housing Development, as allowed by Section 104, then the Applicant must demonstrate that the Project is financially feasible as evidenced by documentation including, but not limited to, a market study, project pro-forma, sources and uses statement,

proposed operating budget, multi-year pro-forma, or other feasibility documentation that is standard industry practice for the type of proposed Housing Development. A market study must meet the requirements in MHP Guidelines Section 7309.

- (11) The Infrastructure Project must be financially feasible, based on the Department's analysis of the Applicant's documentation including, but not limited to, sources and uses statement and other feasibility documentation that is standard industry practice for the type of proposed Infrastructure Project.
- (12) Where approval by a local public works department, or its equivalent, is required for the Infrastructure Project, the application must include a statement from that department indicating that the Infrastructure Project is consistent with all applicable local rules, regulations, codes, policies and plans enforced or implemented by that department.

### **Section 110. Application Selection Criteria**

The following criteria shall be used to rate applications:

**(a) The extent to which the Project will increase public transit ridership and minimize automobile trips – 60 points maximum.**

- (1) A maximum of 30 points shall be assigned to applications in which the best performing mode of transit serving the Qualifying Transit Station has peak period headway frequency of 15 minutes or less. Fifteen points shall be assigned for applications in which the best performing mode of transit serving the Qualified Transit Station has peak period headway frequency between 15 and 20 minutes. Five points shall be assigned for applications in which the best performing mode of transit serving the Qualifying Transit Station has peak period headway frequency between 20 and 30 minutes. Scoring for all other applications will be determined by the best performing primary mode of transit demonstrating all day, on-time arrival/departure performance.
- (2) Four points will be assigned to applications where electronic user information services provide information on schedules and real-time predicted arrival times at the Transit Station, Housing Development, area businesses or through wireless device access for the best performing primary mode of transit serving the Qualifying Transit Station.
- (3) One point will be assigned to Qualifying Transit Stations posting real time schedules and route maps at the Transit Station.
- (4) A maximum of 25 points (5 points will be awarded for each feature) will be assigned to Projects that encourage higher densities, which include one or more of the following actions:

- (A) The Project site to be developed is zoned for high-density, multifamily residential development; or
- (B) The local entity has approved higher-density rezoning for the site; or
- (C) The local entity has awarded a density bonus to the Project that exceeds state density bonus criteria; or
- (D) The proposed Project is a mixed-use development; or
- (E) The Project Developer consolidated multiple small lots into a single parcel for the Project.

**(b) Location in an area designated for infill or transit-oriented development, and where there is coordinated public and private investment – 30 points maximum.**

- (1) Fifteen points will be awarded to applications for Housing Developments located in an area designated for transit-oriented development in the applicable local general plan, specific plan, zoning ordinance, community plan, redevelopment plan, or transit village plan, or in an area regulated by, or included in, land use policies, other regional plans, development regulations or programs which promote transit-supportive residential and nonresidential uses as contemplated by Section 103 (a)(2), which are in effect by the time of the application due date, and transit area overlay zones. Evidence of the Housing Development’s consistency with such plans must be demonstrated by a letter or resolution executed by an officer, or an equivalent representative, from the appropriate governing body confirming such consistency.
- (2) Up to 15 points will be awarded to applications where there is coordinated public and private investment in amounts that are sufficient to transform the area into a transit-oriented community. Applications will be scored based on the amount of permanent development funding from sources other than the Program, as a percentage of the requested amount of Program funds. For each full 10 percent increment above 100 percent, 0.75 points will be awarded. For example, an application will receive 3 points where other funds equal 140 percent of Program funds, and a Project will receive the maximum 15 points where other funds equal 300 percent of Program funds.

In calculating the amount of other funds:

- (A) Funds used for both the Housing Development and the Infrastructure Project will be counted.

- (B) Deferred developer fees will not be counted as a source.
- (C) Land Donations will be counted, and the value of the Land Donation will be the greater of either the original purchase price or the current appraised value supported by an independent third-party appraisal prepared by a Member of the Appraisal Institute (MAI)-qualified appraiser within one year of the application deadline.
- (D) Local Fee Waivers will be counted when supported by written documentation from the Local Public Agency.
- (E) Expenditures or commitments of public and/or private funds during the five years preceding the application due date on transit-oriented infrastructure or housing will be counted.

**(c) The extent to which the Housing Development serves Eligible Households – 30 points maximum.**

Applications will be scored based on the percentage of units in the Housing Development limited to various income levels, in accordance with the following schedule. Applicants may elect to exclude from the calculation of “total units” units which are not utilized in the calculation of leverage points pursuant to subdivision (h) of this Section and which are not utilized in the calculation of the Loan amount pursuant to Section 106. Point scores will be rounded to the nearest one-hundredth point in this category:

- (1) For Rental Housing Development(s), the points will be awarded on the following scale:

Serving Eligible Households	Points per percent of units
Percent of Units Assisted ≤ 50 percent AMI	<b>0.20</b>
Percent of Units Assisted ≤ 40 percent AMI	<b>0.50</b>
Percent of Units Assisted ≤ 30 percent AMI	<b>0.80</b>
Percent of Units Assisted ≤ 20 percent AMI	<b>1.10</b>

**(d) Transit-supportive land use – 20 points maximum.**

Points will be awarded based on the existing and planned land uses in the areas described in Section 103 (a)(2).

- (1) Up to 10 points will be awarded for the pedestrian connectivity of the Project site as determined by the US EPA Walkability Index using the address of the Project site. Click <https://www.epa.gov/smartgrowth/smart-location-mapping#walkability> for the methodology for the Walkability Index. Points will be awarded on the following scale:



<b>Points Awarded</b>	<b>Rating</b>	<b>Rating Color</b>	<b>Score Range</b>
10 points	Most walkable	dark green	15.25 - 20.00
7 points	Above average walkable	light green	10.51 - 15.25
4 points	Below average walkable	yellow	5.76 - 10.50
0 points	Least walkable	orange	1.00 - 5.75

(2) Up to 10 points will be given for projects that provide a map highlighting the location of existing Key Destinations within one-half mile from a Housing Development. Each type of Key Destination is worth two points and may only be counted once. Key Destinations include:

- Bank or post office
- Grocery store which meets the CalFresh Program requirements
- Licensed child care facility
- Medical clinic that accepts Medi-Cal payments
- Office park
- Park accessible to the general public
- Pharmacy
- Place of worship
- Public elementary, middle or high school
- Public library
- University or junior college

**(e) The extent to which the Project incorporates walkable corridor and bicycle features - 50 points maximum.**

Points will be awarded based on the extent to which the application demonstrates the following features exist, or will exist upon completion of the Project, in the primary walkable corridor between the Housing Development and the Qualifying Transit Station. The primary walkable corridor is the route most likely to be taken by pedestrians traveling directly between the Housing Development and the Transit Station. Ten points will be awarded for each feature.

- (1) The corridor is fully served by a continuous, Americans with Disabilities Act (ADA)-compliant path.
- (2) The corridor is safe and accessible. This may include interventions and features such as implementing necessary repairs and/or replacements, providing pedestrian-scale night lighting, providing shade, improving sight distance and visibility, removing any barriers to pedestrians that may have existed along the corridor, providing signage and/or wayfinding markers, etc.

- (3) The proposed corridor improvements are closing any existing gaps in walkability. In addition, if no demonstrable gaps currently exist, the Applicant shall be awarded full points.
- (4) The Transit Station has waiting facilities, seating, lighting, and overhead shelter from outdoor elements.
- (5) The Qualifying Transit Station has bicycle access and provides secure bicycle storage facilities, the affordable Housing Development has no less than one Secure Overnight Bicycle Parking spot for every two residential units that is not publicly accessible and is completely enclosed, and the transit service allows bicycle conveyance on-board.

(f) **Parking Alternatives and Micromobility– 40 points maximum.**

Points will be awarded based on the extent to which the pricing, supply, and management of motor vehicle parking serving the Housing Development promotes economic efficiency and minimizes the development of new parking spaces as detailed below.

- (1) Transit passes (15 points). At least one transit pass shall be made available for each Restricted Unit for at least three years. The card or pass should have a minimum value of 40 average commute length rides a month as determined by the transit agency. Points will be awarded for each of the following:
  - (A) Ten points will be assigned to applications where Housing Developments provide to residents free transit passes or discounted passes priced at no more than half of retail cost for at least three years.
  - (B) Fifteen points will be assigned to applications where Housing Developments provide to residents free transit passes or discounted passes priced at no more than half of retail cost for more than four years.
- (2) Shared parking (5 points). Five points will be assigned to applications where the Housing Development provides parking that will be shared between different uses, such as parking that serves housing residents at night and retail customers by day.
- (3) Car share parking (5 points). Five points will be assigned to applications where the Housing Development restricts dedicated parking spaces to carshare/car-sharing parking (e.g., Zipcar or Getaround).
- (4) Maximum parking spaces (10 points). Notwithstanding item (3) above, 10 points will be assigned to applications that propose zero parking spaces. Five points will be assigned to applications for Projects which provide for

no more than the minimum number of parking spaces required by a jurisdiction.

- (5) Micromobility (5 points). Five points will be assigned to applications where the Project includes capacity for Micromobility services (e.g., Lyme, Jump, Razor, etc.) on-site. Micromobility services shall be accessible to the public, and not solely for residents of the Housing Development.

**(g) Readiness of the Housing Development – 30 points maximum.**

Points will be awarded for each of the following at the level indicated:

- (1) The eligible Applicant has secured Enforceable Funding Commitments for permanent financing of the Housing Development excluding funding provided by another Department Program, provided that this funding is awarded prior to the final rating and ranking of the Program application, tax credit equity, and tax-exempt bonds. (10 points)

(A) Funding Commitment Levels for Rental Housing Developments:

<b>Permanent Financing</b>	<b>Points</b>
At least 90 percent of the total development cost, less deferred costs.	10

<b>Permanent Financing</b>	<b>Points</b>
At least 75 percent of the total development cost, less deferred costs.	5

- (2) Applications with documented compliance with the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA), if applicable. All applicable time periods for filing appeals or lawsuits must have lapsed. (10 points)

- (3) Applications demonstrating that Projects can secure necessary entitlements from the local jurisdiction by the application deadline, as follows (maximum 10 points):

(A) All necessary local land use approvals, including by-right approval, excluding design review, have been granted for the Project, as determined by a local land use authority (e.g., planning or community development director or zoning administrator) (10 points); or

(B) The Project is eligible to receive all necessary local land use approvals pursuant to a nondiscretionary local approval process and has submitted all applications for such necessary approvals (5 points); or

- (C) The Project is consistent with all relevant local planning documents and zoning ordinances, and applications for all necessary discretionary local land use approvals, excluding design review, have been submitted, accepted, and deemed complete by the appropriate local agencies (5 points); or
- (D) Local design review approval has been obtained or is not required (5 points).

(h) **Adopted Economic Development Plan – 10 points maximum.**

- (1) Five points shall be awarded to applications for Projects located in jurisdictions that have adopted either a general plan economic development element or other coordinated economic strategy to promote diversity of investment.
- (2) Five points shall be awarded to applications for Projects located in the following state or federally designated areas: Opportunity Zone, an eligible New Markets Tax Credit (NMTC) census tract, a Neighborhood Revitalization Strategy Area (NRSA), or an authorized Business Improvement District pursuant to the Property and Business Improvement District Law of 1994 (Streets & Highways Code, § 36600 et seq.).

(i) **Accessibility to Qualified Employment Areas – 30 points maximum.**

Points will be awarded based on the number of employees determined to be in a Qualified Employment Area (as determined by utilizing the instructions provided for the mapping and reporting data accessible through the following link: <http://onthemap.ces.census.gov/>) that is within a half-mile radius of a Destination Transit Station which is located no more than 30 minutes\* from the Qualifying Transit Station that serves the Housing Development via public transit and involves no more than one transfer point:

Density Designation	Number of Employees	Points
Low	1,000-10,000	10
Medium	10,000-20,000	20
High	>20,000	30

\*The transit time for accessibility to the Qualified Employment Area from the Qualifying Transit Station to the Destination Transit Station must be demonstrated by the transit agency’s schedule of regular service.

## Article 4. Program Operations

### Section 111. Legal Documents

(a) Rental Housing Developments:

- (1) Upon the award of Program funds to assist a Housing Development, the Department shall enter into one or more agreements with the Sponsor, including a Standard Agreement, which shall commit funds from the Program, subject to specified conditions, in an amount sufficient to fund the approved Program Loan amount. The agreement or agreements shall contain the following:
  - (A) A description of the approved Housing Development and the permitted uses of Program funds;
  - (B) The amount and terms of the Program Loan;
  - (C) The regulatory restrictions to be applied to the Housing Development through the Regulatory Agreement as consideration for the Program Loan;
  - (D) Provisions governing the construction work and, as applicable, the acquisition of the Housing Development site, and the disbursement of Loan proceeds;
  - (E) Special conditions imposed as part of the Department's approval of the Housing Development;
  - (F) Requirements for the execution and the recordation of the agreements and documents required under the Program;
  - (G) Terms and conditions required by federal or state law;
  - (H) Requirements regarding the establishment of escrow accounts for the deposit of documents and the disbursement of Program Loan funds;
  - (I) The approved schedule of the Housing Development, including the commencement and completion of construction or rehabilitation work, and the occupancy by eligible households;
  - (J) The approved Housing Development budget, sources and uses of funds, and financing;
  - (K) Requirements for reporting to the Department;

- (L) Terms and conditions for the inspection and monitoring of the Project in order to verify compliance with the requirements of the Program;
  - (M) Provisions regarding compliance with California's Relocation Assistance Law (Gov. Code, § 7260 et seq.) and the implementing regulations adopted by the Department (Cal. Code Regs., tit. 25, § 6000 et seq.), or to the extent applicable, compliance with federal Uniform Relocation Act requirements;
  - (N) Provisions regarding compliance with article XXXIV, section 1 of the California Constitution;
  - (O) Provisions relating to the placement of a sign on or in the vicinity of the Housing Development site which indicates that the Department has provided financing for the Housing Development; or provisions relating to the Department's arrangement, in its sole and absolute discretion, for publicity of the Program Loan; and
  - (P) Other provisions necessary to ensure compliance with the requirements of the Program.
- (2) The Department shall enter into a Regulatory Agreement with the Sponsor for not less than the original term of the Loan that shall be recorded against the property of the Housing Development prior to the disbursement of funds. The Regulatory Agreement shall include, but not be limited to, the following:
- (A) The number, type, and income level of Restricted Units and Assisted Units;
  - (B) Standards for tenant selection pursuant to UMR Section 8305;
  - (C) Provisions regulating the terms of the rental agreement pursuant to UMR Section 8307;
  - (D) Provisions related to an annual operating budget approved by the Department pursuant to MHP Guidelines Section 7326;
  - (E) Provisions related to a management plan pursuant to MHP Guidelines Section 7324;
  - (F) Provisions relating to rent standards (e.g., rent limits, the funding of transition reserves) pursuant to MHP Guidelines Section 7312;
  - (G) Conditions and procedures for permitting Rent increases pursuant to MHP Guidelines Section 7312;

- (H) Provisions for limitations on distributions pursuant to UMR Section 8314 and on developer fees pursuant to UMR Section 8312;
  - (I) Provisions relating to annual reports, inspections, and independent audits pursuant to MHP Guidelines Section 7325;
  - (J) Provisions regarding the deposit and withdrawal of funds to and from reserve accounts in accordance with UMR Section 8308 and 8309;
  - (K) Assurances that the Housing Development will be maintained in a safe and sanitary condition in compliance with state and local housing codes and the management plan, pursuant to MHP Guidelines Section 7324;
  - (L) Description of the conditions constituting breach of the Regulatory Agreement and remedies available to the parties thereto;
  - (M) Provisions governing use and operation of non-Restricted Units and common areas to the extent necessary to ensure compliance with Program requirements;
  - (N) Provisions relating to enforcement of Program requirements by tenants;
  - (O) Special conditions of Loan approval imposed by the Department;
  - (P) Provisions specifying that the Regulatory Agreement shall be binding on all assigns and successors in interest of the Sponsor and that all sales, transfers, and encumbrances shall be subject to MHP Guidelines Section 7322; and
  - (Q) Other provisions necessary to assure compliance with the requirements of the Program.
- (3) All Program Loans shall be evidenced by a promissory note payable to the Department in the principal amount of the Loan and stating the terms of the Loan consistent with the requirements of the Program. The note shall be secured by a deed of trust on the Housing Development property naming the Department as beneficiary or by other security acceptable to the Department; this deed of trust or other security shall be recorded junior only to such liens, encumbrances, and other matters of record approved by the Department, and shall secure the Department's financial interest in the Housing Development, and the performance of Sponsor's Program obligations.

(b) Infrastructure Projects:

- (1) Grants for Infrastructure Projects shall be governed by a Standard Agreement or other agreement with the Recipient in a form prescribed by the Department. The agreement shall ensure that the provisions of Section 106(b) of these Guidelines are applicable to the Project covered by the agreement and enforceable by the Department. The agreement will contain such other provisions as the Department determines are necessary to meet the requirements and goals of the Program, including, but not limited to, the following:
  - (A) A description of the approved Project and the sources and uses of funds to finance the Project;
  - (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 Project, and the manner, timing and conditions of the disbursement of Grant funds;
  - (D) A schedule for completion of the Project and a series of milestones for progress toward Project completion together with the remedies available to the Department in the event of the failure to meet such milestones;
  - (E) TOD Program awards are subject to California's prevailing wage law (Lab. Code, § 1720 et seq.), unless the Project or Project component falls within a statutory exception to that law's requirements. Although the use of TOD Program funds does not require compliance with the federal Davis-Bacon Act, other funding sources may require compliance with the federal Davis-Bacon Act;
  - (F) Requirements for periodic reports from the Recipient on the construction and use of the Project and provisions for monitoring of the Project by the Department;
  - (G) Provisions regarding compliance with California's Relocation Assistance Law (Gov. Code, § 7260 et seq.) and the implementing regulations adopted by the Department (Cal. Code Regs., tit. 25, § 6000 et seq.), or, to the extent applicable, compliance with federal Uniform Relocation Act requirements;
  - (H) The Recipient's responsibilities for the development of the approved Project, including, but not limited to, construction management, maintaining of files, accounts and other records, and report requirements;



- (I) Provisions for the completion of the Housing Development(s) which qualified the Project for the award of Program funds. The Housing Development shall be regulated by an agreement with a public agency ensuring that the Program requirements for use and occupancy by Eligible Households at affordable Rents or housing costs are met.
  - (J) 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 Project. The Department may also arrange for publicity of the Grant in its sole discretion;
  - (K) Remedies available to the Department in the event of a violation, breach or default of the agreement;
  - (L) 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 Project;
  - (M) Special conditions imposed as part of Department approval of the Project;
  - (N) Terms and conditions required by federal or state law; and
  - (O) Other provisions necessary to ensure compliance with the requirements of the Program.
- (2) The Recipient and the Department shall enter into a Disbursement Agreement to ensure the timely completion of the Project as identified and described in the Standard Agreement. The Disbursement Agreement shall govern the manner, timing, and conditions of the disbursement of Grant funds, and it must be fully executed prior to any disbursement of the Grant funds. The Disbursement Agreement will identify the payee, and it will include those provisions that the Department determines are necessary to meet the requirements and goals of the Program. Such provisions may include, but are not limited to, the following:
- (A) General conditions of disbursement;
  - (B) Conditions precedent to individual disbursements;
  - (C) Draw request procedures;
  - (D) Remedies upon an event of default; and
  - (E) A disbursement schedule.

- (3) The Recipient shall ensure that a Covenant is recorded for the benefit of the Department and in service of the requirements and goals of the Program. The Covenant will impose development, use, occupancy, and affordability restrictions on the real property site(s) of the Housing Development which is benefited by the Infrastructure Project, and it must be recorded prior to any disbursement of the Grant funds. The Covenant will ensure the affordability of the Housing Development's rental units for at least 55 years; other Covenant restrictions will be in line with the requirements and design of the TOD Program. The Covenant shall be recorded on the fee interest in the real property site(s) of the Housing Development.