

# **Transit-Oriented Development Program**

## **2026 Draft Guidelines**



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## **Article I. General**

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

- (a) These Transit-Oriented Development Implementation Program (TOD or Program) Guidelines (Guidelines) implement and interpret Part 13 (commencing with Section 53560) of Division 31 of the Health and Safety Code (*Amended by Stats. 2025, Ch. 22, Sec. 54. (AB 130) Effective June 30, 2025.*)
- (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 any of the UMRs and these Guidelines, the provisions of these Guidelines are controlling.
- (d) The Multifamily Housing Program Final Guidelines, effective February 13, 2025, and as subsequently amended including amendments that may be introduced as part of the Housing Development Finance Committee implementation (the “MHP Guidelines”) 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.
- (e) The CalHome Guidelines, effective December 12, 2024, and as subsequently amended (the “CalHome Guidelines”), are hereby incorporated by reference. In the event of a conflict between any of the CalHome Guidelines and these Guidelines, the provisions of these Guidelines are controlling.

### **Section 100.1. Program Overview**

- (a) Chapter 22, Statutes of 2025 (AB 130) authorized the Department, under the existing Transit-Oriented Development Implementation Program (TOD), to make loans for the development of vehicle miles traveled-efficient affordable housing, as specified, or to make grants for infrastructure necessary for the development of affordable housing, as specified. Any such loan structure is used to address administrative considerations, including gap financing and long-term monitoring, and does not affect the treatment of mitigation contributions as fully expended for purposes of California Environmental Quality Act (CEQA) compliance.
- (b) Chapter 22, Statutes of 2025 (AB 130) also authorizes the existing Transit-Oriented Development Implementation Fund (TDIF) to be used as a mitigation bank that receives funds from CEQA mitigation contributions determined by Lead Agencies pursuant to

subdivision (b) of Section 21080.44 of the Public Resources Code. Such mitigation contributions are then used to fund or otherwise facilitate the development of Mitigating Projects.

- (c) The Program serves as one optional strategy an Impacting Project applicant may use to mitigate a significant transportation impact under CEQA. This approach is consistent with established practices already used at the local and regional level across the state and provides project applicants with an additional tool to support their mitigation efforts.
- (d) Funds deposited into the TDIF shall be available to the Department for the purpose of awarding funding for affordable housing or related infrastructure projects described in these Guidelines. The Department will provide affordable housing funding in the form of loans to developers, Local Public Entities, and Eligible Tribal Applicants, and it will provide infrastructure funding in the form of grants to Local Public Entities and Eligible Tribal Applicants.
- (e) Contributions made to the TDIF pursuant to CEQA mitigation requirements are non-refundable and do not create any right to repayment, reimbursement, or financial interest for the Impacting Project applicant.
- (f) Program funds will be allocated to Mitigating Projects as set forth in the Notice of Funding Availability (NOFA).
- (g) Availability of funding for the Program is ultimately dependent on decisions and determinations made by Lead Agencies (not the Department), including determinations by a given Lead Agency:
  - (1) that the project proposed by the Lead Agency requires VMT mitigation, and;
  - (2) the subsequent determination that mitigation shall be in the form of VMT mitigation funding assistance authorized per PRC 21080.44 that will contribute to Mitigating Projects.

### **Section 101. Defined Terms**

All capitalized terms not defined below shall have the meaning ascribed to them under the UMRs or as indicated by context, the MHP Guidelines or the CalHome Guidelines, as applicable.

**Adaptive Reuse** means the repurposing of building structures (e.g., offices, commercial spaces, business parks) for residential purposes. When referring to building structures, Adaptive Reuse means the retrofitting and repurposing of existing buildings in order to create new residential Units.

**Assisted Unit** means a housing Unit that is subject to Program Rent, sale, and/or occupancy restrictions as a result of financial assistance provided under the Program.

**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 are limited to the time between 7 a.m. to 10 a.m., inclusive, and 3 p.m. to 7 p.m., inclusive, Monday through Friday or the alternative peak hours designated for the transportation corridor by the transit agency. This level of service must have been publicly posted by the provider in the 12 months preceding the Program application due date.

**Bus Transfer Station** means an arrival, departure, or transfer point for the area's intercity, intraregional, or interregional bus service having a permanent investment in multiple bus docking facilities, ticketing services, and passenger shelters.

**Disbursement Agreement** means the agreement which controls the phased disbursement of TOD RIP grant funds, and which is executed by the Recipient and the Department. The Disbursement Agreement is specified and described in more detail at Section 113(b)(2) of these Guidelines.

**Eligible Tribal Applicant** means any, all, or a combination of the eligible applicants specified in subdivision (b) of Section 50651 of the Health and Safety Code.

**Enforceable Funding Commitments** means a letter or other document evidencing, to the satisfaction of the Department, a commitment of funds or a reservation of funds by a Project funding source for construction or permanent financing, including, but not limited to, the following:

- (a) Private financing from a lender other than a mortgage broker, the Applicant, or an entity with an identity of interest with the Applicant, unless the Applicant is a lending institution actively and regularly engaged in residential lending;
- (b) Deferred-payment financing, residual receipts payment financing, and grants from public agencies; Funds awarded by another Department program. Proof of award must be issued prior to final rating and ranking of the Program application; 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 fee waivers are not otherwise required by federal or state law ("Local Fee Waiver"), shall 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. A below-market ground lease (\$1 per year) that meets the requirements of UMR section 8316 would be considered a land donation;

- (c) 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 the deferred Developer Fee. The Applicant shall be prepared, upon Department request, to provide evidence that the proposed amount of owner equity or developer funds is actually available at the time of application;
- (d) Funds for transportation projects, if an eligible use of Program funds must be programmed for allocation and expenditure in the applicable Project plan consistent with the terms and timeframes of the Standard Agreement;
- (e) Enforceable Funding Commitment Letters must contain the following:
  - (1) The name of the Applicant or Development Sponsor;
  - (2) The Project name;
  - (3) The Project site address, assessor's parcel number, or legal description; and;
  - (4) The amount, interest rate (if any), and terms of the funding source.

The assistance will be deemed to be an Enforceable Funding Commitment if it has been awarded to the Project or if the Department approves other evidence that the assistance will be reliably available. The Enforceable Funding Commitment may be conditioned on certain standard underwriting criteria, such as appraisals, but may not be generally conditional. Examples of unacceptable general conditions include phrases such as "subject to senior management approval", or a statement that omits the word "commitment" but instead indicates the lender's "willingness to process an application" or indicates that financing is subject to loan committee approval of the Project. Contingencies in commitment documents based upon the receipt of tax-exempt bonds or low-income housing tax credits will not disqualify a source from being counted as committed.

**Fiscal Integrity** means the total Operating Income plus funds released pursuant to the Regulatory Agreement from the operating reserve account is sufficient to:

- (a) pay all current Operating Expenses;
- (b) pay all current debt service (excluding deferred interest);
- (c) fully fund all reserve accounts (other than the operating reserve account) established pursuant to the Regulatory Agreement; and;

(d) pay other extraordinary costs permitted by the Regulatory Agreement. The ability to pay any or all of the permitted annual distributions shall not be considered in determining Fiscal Integrity.

**High-Quality Transit Corridor** has the same meaning as PRC 21155 (b): a high-quality transit corridor means a corridor with fixed route bus service with service intervals no longer than 15 minutes during peak commute hours.

**Infrastructure Covenant** means an instrument which restricts the development, use, occupancy, and affordability of the AHD (either rental or homeownership), which is recorded against the fee interest of the AHD, and which runs with the land. The Infrastructure Covenant is executed and recorded as consideration for the Department's award of TOD RIP grant funds to the Recipient. The Infrastructure Covenant is specified and described in more detail at Section 113(b)(3) of these Guidelines.

**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, Irvine, Long Beach, Los Angeles, Oakland, Riverside, Sacramento, San Diego, San Francisco, San Jose, Santa Ana, and Stockton. These California cities have a population exceeding 300,000 according to California Department of Finance data.

**Lead Agency** means the public agency which has the principal responsibility for carrying out or approving a project which may have a significant effect upon the environment.

**Local Public Entities** means cities, counties, cities and counties, and transit agencies.

**Location-Efficient Area** means a geographic area identified for the purpose of implementing the funding priority order for Mitigating Projects set forth at subdivision (c)(1) of Section 21080.44 of the Public Resources Code. Specifically, a Location-Efficient Area must meet the requirements set forth in Section 102. Eligible Projects (a).

**Impacting Project** means a project that requires mitigation under CEQA because it is expected to have a significant transportation impact and is utilizing the Mitigation Program to reduce its impact.

**Indian Country** means the following:

- (a) All land located in "Indian country," as defined by 18 U.S. Code (USC) 1151;
- (b) All land within the limits of a rancheria under the jurisdiction of the United States government;
- (c) All land held in trust by the United States for an Indian tribe or individual; or

- (d) All land that is held by an Indian tribe or individual, and that is subject to a restriction by the United States against alienation.

**Major Transit Stop** has the same meaning as PRC 21064.3: a site containing any of the following:

- (a) An existing rail or bus rapid transit station.
- (b) A ferry terminal served by either a bus or rail transit service.
- (c) The intersection of two or more major bus routes with a frequency of service interval of 20 minutes or less during the morning and afternoon peak commute periods.

**Mitigating Project** means an affordable housing development or related infrastructure project that qualifies for (and is selected to receive funding through) the TOD program.

**Mitigation Program** means the Voluntary statewide VMT mitigation program established pursuant to PRC Section 21080.43 which allows lead agencies to mitigate a project's significant CEQA transportation impacts by helping to fund or otherwise facilitating affordable housing or related infrastructure projects by contributing an amount into the Transit-Oriented Development Implementation Fund for purposes of the Transit-Oriented Development Implementation Program.

**Mixed-Use Development** means a development consisting of residential units and compatible nonresidential uses

**Payee** means any entity to whom the Department disburses Program funds (i.e., an AHD loan and/or a RIP grant), which entity is:

- (a) a Recipient;
- (b) a special purpose entity controlled by the Sponsor within the meaning of UMR 8313.2; or
- (c) a non-Applicant entity who is a signatory and party to an executed STD 213, Standard Agreement for the Mitigating Project.

**Project** means the Mitigating Project proposed in the application unless otherwise specified.

**Proximity Radius** has a meaning set forth in guidance from LCI. The term is relevant to the Department's implementation of the funding priority order for Mitigation Projects set forth in section 3.2 of LCI's Guidance and at subdivision (c)(1) of Section 21080.44 of the Public Resources Code.

**Recipient** means an eligible applicant receiving a commitment of Program funds.

**Region** means the territory of the metropolitan planning organization within which an Impacting Project is located, or the territory of the regional transportation planning agency within which an Impacting Project is located if the site is located outside of the boundaries of a metropolitan planning organization.

**Regulatory Agreement** means the written agreement between the Department and the Recipient/Sponsor that will be recorded as a lien against the AHD to control its use, occupancy, affordability, and maintenance for the applicable term, regardless of any prepayment of the loan. The Regulatory Agreement is specified and described in more detail at Section 113(a)(2) of these Guidelines.

**Rehabilitation** is defined in accordance with HSC Section 50096, and includes improvements and repairs made to a substandard residential structure necessary to make it meet rehabilitation standards. To be eligible for funding under this Program, all Rehabilitation project proposals must also demonstrate that the development is at risk of losing affordability, either because of an expiring affordability restriction or because there are habitability issues with its units.

**Rent** has the same meaning as “gross rent,” as defined in accordance with the Internal Revenue Code (IRC) (26 USC 42(g)(2)(B)). It includes all mandatory charges, other than deposits paid by the tenant, for use and occupancy of an Assisted Unit, plus a utility allowance established in accordance with TCAC regulations, if applicable. For units assisted under the Housing Choice Voucher (HCV) or similar rental or operating subsidy program, rent includes only the tenant contribution portion of the contract rent.

**Restricted Unit** has the same meaning as defined in UMR Section 8301(q), excluding units restricted at levels above 80 percent of AMI.

**Scattered Site** means a housing development comprising multiple properties, either contiguous or non-contiguous, developed as a single unified project. The defining criteria are as specified under Section 8303 of the UMRs.

**Structured Parking** means a structure in which vehicle parking is accommodated on multiple stories; a vehicle parking area that is underneath all or part of any story of a structure; or a vehicle parking area that is not underneath a structure, but is entirely covered, and has a parking surface at least eight feet below grade. Structured Parking does not include surface parking, residential garages, or carports, including solar carports.

**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 deadline for submittal of applications set forth in the NOFA.

**Unit** has the same definition as UMR Section 8301(x).

**Urban Center** means an area other than a Large City Downtown which is served by more than one mode of transit.

**Urban Uses** is defined, in accordance with HSC 53559.1(j), to mean any residential, commercial, industrial, public institutional, transit or transportation passenger facility, or retail use, or any combination of those uses.

## Article II. Administration of Funds

### Section 102. Eligible Projects

- (a) The Mitigating Project must be wholly located in an area that meets the requirements of (1) or (2) below:
- (1) a Location-Efficient Area. If any one of the criteria listed below in Table 1 are met, a location would qualify as being a "Location-Efficient Area."

<b>Table 1. Location-Efficient Area</b>		
<b>Criteria</b>	<b>General Metric</b>	<b>Specific Metric</b>
1	Regional VMT per Capita	In a location that is 15% below regional average for per-capita VMT.
2	Transit Accessibility	Within one half-mile of an existing major transit stop or high-quality transit corridor.
3	Transit Accessibility & Infill	Served by at least two existing transit routes, each with at least one stop within one half-mile of the Mitigating Project. <b>AND</b> Mitigating Project is located on a site within an urban area that has been previously developed, or on a vacant site where at least 75 percent of the perimeter of the site adjoins, or is separated only by an improved public right-of-way from, parcels that are developed with qualified urban uses.

- (2) Non-Location-Efficient Area. If any two of the criteria listed below in Table 2 are met, a location would qualify as being eligible under the Mitigation Program for the purposes of PRC Section 21080.44(c)(1)(B).

<b>Table 2. Non-Location-Efficient Area</b>		
<b>Criteria</b>	<b>General Metric</b>	<b>Specific Metric</b>
1	Regional VMT per Capita	In a location that is below regional average for per-capita VMT.
2	Transit Accessibility	<p>Within one mile of an existing major transit stop or high-quality transit corridor.</p> <p><b>OR</b></p> <p>Served by at least two existing transit routes, each with at least one stop within one mile of the Mitigating Project.</p>
3	Infill	Mitigating Project is located on a site where at least 50% of the perimeter of the site adjoins, or is separated only by an improved public right-of-way from, parcels that are developed with qualified urban uses.

(b) A Mitigating Project shall include the following:

- (1) An Affordable Housing Development (AHD) which may comprise either multifamily rental housing or owner-occupied housing.

(c) A Mitigating Project may include the following:

- (1) A Related Infrastructure Project (RIP). If the Mitigating Project includes a RIP, then the application shall include, as an applicant or co-applicant, a Local Public Entity or Eligible Tribal Applicant as the Payee of the grant infrastructure funds.

(d) To be eligible for funding, an AHD must:

- (1) Contain 20 or more Units. A for-sale single-family home or a condominium unit is considered to be one Unit, and a rental apartment Unit in an apartment building is considered to be one Unit regardless of the number of bedrooms within the apartment Unit.

- (2) Must consist of one or more of the following:

- (A) New construction.
  - (B) Acquisition and Rehabilitation (including preservation of affordable housing at-risk of conversion to market rate) where funding is necessary to prevent the loss of Restricted Units either because of expiring affordability restrictions or habitability issues. The acquisition must be made through a bona fide arm's-length sale or transfer from the existing ownership entity to the new ownership entity comprised of a completely disparate ownership structure, which contains no common entity interest at any level of the organizational structure.
    - (i) Rehabilitation AHDs with existing Department restrictions must comply with loan restructuring requirements pursuant to HSC Sections 50560 through 50562 and current Portfolio Restructuring Guidelines published by the Department. Restructuring transaction fees are set forth in UMR Section 8317.
    - (ii) Demonstrate that the AHD will not cause the number of existing bedrooms to be reduced:
      - a. Proposed AHD involving new construction or Rehabilitation and requiring the demolition of existing residential units are eligible only if the number of bedrooms in the new AHD is at least equal to the number of bedrooms in the demolished structures, with equal or greater affordability. The new Restricted Units may exist on separate parcels provided all parcels are part of the same AHD meeting the requirements of the UMRs Section 8303 (b). The Department may approve AHDs involving new construction or Rehabilitation requiring the demolition of existing residential units that result in a number of bedrooms less than the number in the demolished structures where it determines that such approvals will substantially improve the livability of the remaining units, or serve some other compelling public policy objective, as long as the reduction does not result in more than 25 percent fewer Units upon AHD completion.
  - (C) Adaptive Reuse of one or more building structures.
- (3) Other development funding sources, including all tax credit equity generated by the Project, are insufficient to cover Project development costs.
  - (4) Rental and Homeownership AHDs must include at least 20 percent of the total units as Assisted Units.

- (5) Have a minimum net density, upon completion of the AHD, not less than shown in 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

- (e) An AHD may:
- (1) Include residential units that are rental or homeownership, but not both.
  - (2) Consist of a Scattered Site development that meets additional criteria described in this paragraph. Rental AHDs on a Scattered Site must meet all the requirements set forth by Section 8303(b) of the UMRs. For Homeownership AHDs on Scattered Sites, the individual sites must have a single owner at the time of execution of the TOD Standard Agreement. All proposed sites within a Scattered Site application must be within the same Location-Efficient Area or otherwise meet the same location-based requirements specified at Section 102 of these Guidelines.
  - (3) Include nonresidential uses that are compatible under local zoning.
- (f) A Related Infrastructure Project must:
- (1) Be integral to or necessary for the completion and proper functioning of the AHD;
  - (2) Directly facilitate or support the AHD; and
  - (3) Be located on or within one mile of the AHD site.
- (g) A RIP pursuant to Section 102(c) of these Guidelines may include any of the following capital improvements:
- (1) Capital improvements required by the Local Public Entity, Eligible Tribal Applicant, or special district as a condition of development, including but not limited to, sewer or water system upgrades, on-site streets and drives, or streets that improve access to transit stops or relieve bottlenecks, 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 the AHD, including, but not limited to, pedestrian walkways,

plazas, mini-parks, signal lights, streetscape improvements, security enhancements, bicycle lanes, intelligent transportation, and information systems.

- (3) Capital improvements for the construction, rehabilitation, including improvements and repairs made to a residential structure acquired for the purpose of preserving its affordability, acquisition, or other physical improvement that is an integral part or necessary to facilitate the development of the AHD by providing the improvements or conditions required for the housing to be constructed, rehabilitated, occupied, or safely operated and does not include optional enhancements or improvements that are not necessary for the housing to be built or operated.

(h) AHD shall not include:

- (1) An AHD that contains multiple development sites when one development site receives 4 percent low-income housing tax credits and another receives 9 percent low-income housing tax credits, or when the multiple development sites each receive separate 4 percent low-income housing tax credits.
- (2) An application proposing an AHD with both 4 percent low-income housing tax credits and 9 percent low-income housing tax credits, or with multiple 4 percent low-income housing tax credits, will be disqualified. To the extent such tax credit scenarios are contemplated, they shall constitute two separate and independent AHDs, each of which must submit an entirely separate Program application and qualify independently of the other.
- (3) Any application that proposes a single AHD, but after receiving an award letter attempts to split its single AHD into multiple AHDs with separate ownership structures or separate financing structures will be disencumbered as it no longer meets Program requirements.

- (i) To be eligible for Program funding, all components of the proposed Mitigating Project must be situated wholly within the State of California. No portion of a project located outside California's boundaries may be funded.

### **Section 103. Eligible Applicants**

(a) The eligible Applicant for a rental AHD loan is a Sponsor.

- (1) The Sponsor shall be the legal entity that the Department relies upon for experience, capacity, and control.

- (A) A Sponsor shall be any joint venture; partnership; limited partnership; trust; corporation; cooperative; Local Public Entity; Tribal Entity; or other legal entity; or any combination thereof.
  - (B) Sponsor shall submit the application for Department funds and be the recipient of the Department's award of funds.
  - (C) Sponsor shall be organized on a for-profit, limited profit, or nonprofit basis.
- (b) The eligible Applicant for a homeownership AHD loan is a Developer.
- (1) The Developer applicant shall meet the requirements set forth herein, and in the CalHome Guidelines.
- (c) The eligible Applicants for Related Infrastructure Projects are Local Public Entities or Eligible Tribal Applicants that meet all relevant requirements.
- (d) Applicant eligibility is dependent upon meeting the experience requirement relevant to the Mitigating Project proposed.
- (1) Applicants must demonstrate experience by providing evidence that they have successfully developed, operated, and owned at least one project that is similar to each proposed AHD or RIP, as applicable, during the ten years preceding the application due date. Experience is attributable to entities only, not individual persons.
  - (2) For AHD components, each completed project submitted to demonstrate project completion and operational experience must include functionally equivalent:
    - (A) Unit type: including affordability, tenure, population, bedroom count, and other metrics;
    - (B) Project size: including total units in the proposed AHD not to exceed 200 percent of the Sponsor/Developer's submitted experience example AHD;
    - (C) Scope: including the general services provided or amenities within the AHD; and;
    - (D) Unit counts used for demonstration of experience may not be cumulative across multiple projects and phases.
  - (3) For RIP to be completed by a non-Applicant, the Applicant must provide an executed agreement with the Local Public Entity non-Applicant for the completion of the RIP,

thereby demonstrating that the Local Public Entity will be serving as the RIP Developer for that Project.

- (A) Non-Applicant may be a payee of applicable RIP.
- (e) The Applicant shall demonstrate capacity to acquire, develop, and own either affordable rental or homeownership housing that is consistent with the housing type proposed in the application. For purposes of this subdivision, an entity must demonstrate it has capacity by identifying adequate staff, capital, assets, and other resources to meet the development and operational needs of the AHD; to maintain the Fiscal Integrity of the AHD; and to satisfy all legal requirements and obligations in connection with the AHD. The Department will exercise reasonable discretion in determining capacity. In all cases, the Department will base its capacity determination on the experience, past performance, and organizational documents of the Sponsor/Developer.
  - (1) The Department may request any of the following documents subsequent to application submittal:
    - (A) Staff rosters, which include the job titles and duty statements of all staff positions, and payroll records;
    - (B) Certified audited financial statements for the past three consecutive years;
    - (C) Certificates of Good Standing from the California Secretary of State, the California Franchise Tax Board, or the relevant regulatory agencies of foreign jurisdictions; and
    - (D) Any other documentary evidence that reasonably supports the Applicant's ability to satisfy the capacity requirement.
- (f) A Local Public Entity's controlled affiliate is an eligible Applicant if it demonstrates experience, capacity and Site Control or if both the Local Public Entity and its affiliate are Applicants and between the two, they demonstrate experience, capacity, and Site Control.
- (g) If Applicant is applying for a rental AHD, the Applicant with experience must perform a substantial management role in the borrowing entity from the time of award through the full term of the Regulatory Agreement, as evidenced by the applicable organizational documents. Such role shall include the substantial management duties set forth at UMR Section 8313.2.
- (h) A special purpose entity formed and controlled by the Sponsor/Developer, and which will serve as the ultimate borrower of Program funds, is not an eligible Applicant.

- (1) Single purpose entities not meeting the requirements of a special purpose entity pursuant to UMR Section 8313.2, whether serving as an intermediate entity within the ultimate borrower structure or not, are not eligible Applicants. Such single purpose entities will not be included as a separate party on any Program legal documents, including but not limited to, Standard Agreements, nor are they eligible to be recipients of Program funds.
- (i) Where a Local Public Entity has a real property interest in the proposed Project, the application must include the Local Public Entity as a joint Applicant or otherwise include a commitment to enter into a contractual agreement to develop the Project, if it is awarded.
- (j) All Applicants appearing on the application for the Project will be held jointly and severally liable for the completion of the Project and as such, will each sign all Standard Agreements to the award of Program funds. Each 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 indemnify each other by entering into agreements with one another as to individual capital projects. In no event will any such agreement alter, amend, or revoke each individual recipient's obligations to the Department, including the joint and several liability.
- (k) All Payees shall execute the STD 213, Standard Agreement generated in connection with the funds which they are to receive.

### **Section 103.1. Threshold Requirements**

Projects shall be eligible for an award of funds if the application demonstrates that the following threshold requirements have been met at time of application, unless otherwise noted:

- (a) The application proposes an eligible Project that meets the requirements of Section 102;
- (b) The proposal is submitted by an eligible Applicant pursuant to Section 103;
- (c) All proposed uses of Program funds are eligible pursuant to Section 104;
- (d) The application is sufficiently complete to assess Project feasibility and compliance with Program requirements. Applications will be made available through the Department, and complete applications and supporting documentation must be submitted to the Department by the deadline detailed in the NOFA. An application workbook will be developed by the Department in accordance with these Guidelines and will outline the

required documentation and methods by which compliance with the Guidelines is demonstrated.

- (e) The application must demonstrate that the Project is infeasible without Program funds, and the Program funds will not supplant other available funds.
- (f) The application must meet minimum and maximum funding limits set forth in the NOFA to ensure that awards are sized to meaningfully close financing gaps, promote cost efficient use of limited resources, and allow the Program to fund a diverse pipeline of Mitigating Projects.
- (g) Demonstrate consistency with the applicable Sustainable Communities Strategy (SCS) or alternative planning strategy.
- (h) Where approval by a local public works department, or other responsible local agency, is required for any component of the Project, the application must include a statement from that entity indicating that the Project is consistent with all applicable local rules, regulations, codes, policies, and plans enforced or implemented by that entity.
- (i) The Applicant must document the status of local land use approvals by submitting the Project's local approvals and environmental review verification form found in the application. If the Applicant is applying for streamlined ministerial approval under Section 65913.4 of the Government Code, the form must indicate that an application has been submitted to the relevant local government. The local approvals and environmental review verification form must be completed and signed by the local authority and must provide the status of all entitlements related to the Project, the applicability of the California Environmental Quality Act ("CEQA") and the National Environmental Policy Act ("NEPA") to the Project, and the status of the Project's compliance with CEQA and NEPA, to the extent applicable.
  - (1) This threshold requirement is not applicable where a Eligible Tribal Applicant is proposing a Project that is located in Indian Country.
- (j) As of the date of application, applications that include a Local Public Entity as an Applicant must have submitted their two previous housing element annual progress reports to the Department as required by Government Code section 65400.
- (k) As of the date of application, the Applicant(s), the Project, or the real property on which the Project is proposed may not be party to or the subject of any claim or action in the state or federal courts that affects or potentially affects the feasibility of the Project. Further, the Applicant(s) shall disclose and describe all claims or actions undertaken by or against the Applicant(s), the Project or the property.

- (l) As of the date of application, construction of the AHD and RIP must not have commenced except for emergency repairs to existing structures necessary to mitigate documented hazards or threats to health and safety. Construction of off-site infrastructure may have commenced if part of a documented phased implementation plan.
  - (1) For the purposes of this subdivision, the commencement of construction or Rehabilitation work means the first land-disturbing activity associated with a Project, including land preparation such as clearing, grading, and filling, or the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.
- (m) For Rehabilitation AHDs, the following additional documents are required:
  - (1) Physical Needs Assessment (PNA)
  - (2) Capital Needs Assessment (CNA)
  - (3) Lead-based paint, mold, and asbestos reports
- (n) In competitive NOFAs the Project shall achieve a minimum point score as set forth in the NOFA;
- (o) The Project, as proposed in the application, is financially feasible, as evidenced by documentation such as, but not limited to, Enforceable Funding Commitments, market study, appraisal, project proforma, sources and uses statement, or other feasibility documentation that is standard industry practice for the type of proposed Project;
  - (1) Rental AHDs must meet underwriting standards set forth in the UMRs.
  - (2) Ownership AHDs must meet underwriting standards set forth in CalHome Guidelines.
- (p) The AHD shall, adhering to restricted rents: be underwritten utilizing rents less utility allowances; be feasible pursuant to the underwriting standards in UMR Section 8310; and maintain Fiscal Integrity.
  - (1) Rent standards shall be established pursuant to MHP Guidelines Section 7312.
  - (2) Proposed Rents may only be used if a Locality has rent restrictions that differ from TCAC and are required due to a local ordinance.
  - (3) The proposed rent cannot be less than 50 percent of the maximum restricted rent for the Units' rent and income limit(s) submitted in the application; and;

- (4) Third-party documentation of anticipated public cash assistance payment levels shall be provided in the application and updated prior to permanent loan closing, which supports the need for the proposed rents.
- (q) Environmental Site Assessment (ESA) reporting:
- (1) A Phase I ESA must be completed and dated no more than 12 months prior to the application deadline. The Phase I ESA must indicate that the Project site(s) are free from adverse environmental conditions, such as the presence of toxic waste.
  - (2) If the Phase I ESA recommends a Phase II ESA or reveals known or potential contamination, a Phase II ESA is required to be completed and dated no more than 12 months prior to the application deadline. The foregoing Section 103.1(q)(1) notwithstanding, if a Phase II ESA has been completed and dated within 12 months prior to the application deadline, the recommending Phase I ESA may have been completed and dated 12 months or more prior to the application deadline.
  - (3) If the Phase II ESA indicates or discloses that the presence of toxic waste is economically infeasible to remove or cannot be mitigated, then the application is ineligible for a Program Award.
  - (4) The threshold requirements in Section 103.1(q) are not applicable where an Eligible Tribal Applicant is proposing a Project located in Indian Country.
- (r) AHD must meet internet broadband requirements set forth in MHP and CalHome Guidelines according to the housing tenure proposed.
- (s) The Project complies with the restrictions on demolition as set forth in UMR Section 8302;
- (t) The Applicant serving as the Sponsor/Developer of a particular component of the Project must demonstrate Site Control of the property on which that Project component will be located as set forth at UMR Sections 8303 and 8316 with the additional requirement that the Applicant maintain Site Control through the award date.
- (1) The following shall apply to AHDs and RIPs:
    - (A) Where Site Control is in the name of another entity, the Applicant shall provide documentation, in form and substance reasonably satisfactory to the Department (e.g., a purchase and sale agreement, an option, a ground leasehold interest/option, a disposition and development agreement, an exclusive right to negotiate with a Public Agency for the acquisition of the site), which clearly demonstrates that the Applicant has an acceptable form of right to acquire or long-term ground lease the Project property.

(B) Where Site Control will be satisfied by a long-term ground lease, the Department will require the execution and recordation of the Department's form lease rider at the time of permanent loan closing, which shall be entered into by and among the ground lessor, the ground lessee, the Department, and any other parties as the Department may require. In all cases (with applicable exceptions made for Projects developed in Indian Country), the lease rider shall be recorded against the fee interest in the Project property. For Projects developed in Indian Country, the Department's form lease rider, together with any and all other use restriction instruments, shall be approved by, and recorded with, the U.S. Department of Interior's Bureau of Indian Affairs ("BIA").

(u) The Project complies with all State and Federal Laws, Rules, Guidelines and Regulations including those set forth in Section 114.

**Section 104. Eligible Costs**

(a) Eligible costs for Affordable Housing Developments:

- (1) Eligible costs for Rental AHDs are limited to costs for the AHD, as specified in the MHP Guidelines Section 7304.
- (2) Eligible costs for Ownership AHDs are limited to costs for the AHD, as specified in the CalHome Guidelines Section 202.

(b) Eligible costs for Related Infrastructure Projects include:

- (1) Costs for RIPs include Capital improvements required by a Local Public Entity, Eligible Tribal Applicant, or special district as a condition for the development of the affordable housing, including but not limited to,
  - (A) sewer or water system upgrades
  - (B) streets meeting the requirements of Section 103 (d)(1)
  - (C) construction of drainage basins
  - (D) utility access, connection, or relocation
  - (E) noise mitigation
- (2) Capital improvements that clearly and substantially enhance public pedestrian or bicycle access from the AHD including, but not limited to,
  - (A) pedestrian walkways,
  - (B) plazas, or mini-parks,
  - (C) signal lights,

- (D) streetscape improvements,
  - (E) security enhancements,
  - (F) bicycle lanes,
  - (G) intelligent transportation, and
  - (H) information systems.
- (3) Capital improvements for the construction and Rehabilitation, including
- (A) improvements and repairs made to a residential structure acquired for the purpose of preserving its affordability,
  - (B) acquisition, or
  - (C) other physical improvement that is an integral part or necessary to facilitate the development of the AHD.
- (4) The following costs are not eligible for Related Infrastructure Projects:
- (A) Parking spaces, except for Transit Station Structured Parking spaces required to replace existing transit station patron parking spaces displaced by construction of new housing identified in the application. Awarded funds for Transit Station Structured Parking may not exceed \$50,000 per space and may not exceed 30 percent of the total Program award amount.
  - (B) Soft costs related to ineligible costs.
  - (C) In-lieu fees for local inclusionary programs.

**Section 105. Cost Limitations**

- (a) When calculating per unit AHD subsidy (loans for rental AHDs and homeownership AHDs), the Department will consider all other available financing and assistance, including the full amount of any tax credit equity generated by the Project. In addition, the per unit subsidy amount in the aggregate shall not exceed that amount necessary, after factoring in all other available financing and assistance, to pay the following eligible costs allocable to the Assisted Units:
- (1) Acquire, develop, and construct or rehabilitate the AHD;
  - (2) Ensure that rents or sale prices for Assisted Units comply with Program requirements; and
  - (3) Operate the AHD in compliance with all other Program requirements.

- (4) With the exception of the deferred developer fee, Department funds shall not be used to supplant other available financing, including funds committed by local jurisdictions.
- (b) Developer fee amounts and limits are specified in the MHP Guidelines Section 7305.
- (c) All financial assistance awarded under the Program, including funding for AHDs and RIPs, shall be applied only to Assisted Units and, as applicable, to infrastructure that is necessary for, and primarily benefits, those Assisted Units. TOD funds may not be used for non-residential components of Mixed-Use Developments, unrestricted residential units, or infrastructure improvements that do not support Assisted Units.

### **Section 106. Funding Terms**

- (a) Repayable Rental AHD Loans: Terms for rental AHD Loans are established in the MHP Guidelines Section 7306.
- (b) Repayable Homeownership AHD Loans: Terms for homeownership AHD Loans are established in the CalHome Guidelines Section 400.5.
- (c) Forgivable Rental and Homeownership AHD loan terms shall be as follows:
  - (1) Zero percent interest for 55 years, with no residual receipts or periodic payment requirements during the life of the TOD loan with the exception of compliance and monitoring fees where required.
  - (2) The loan will be forgiven by the Department at the end of the 55-year loan term as long as all of the following are true, as determined by the Department in its sole and absolute discretion:
    - (A) The Sponsor/Developer remains in good standing with the California Secretary of State;
    - (B) The Project is not in default under the terms of any of the Department's loan documents for that project; and
    - (C) Negative points have not been assessed against the Sponsor/Developer during the previous five years in connection with any Department-assisted project.
  - (3) The TOD loan shall be subject to repayment if, during the 30-year term, the AHD is:
    - (A) converted to market-rate housing; or
    - (B) sold or refinanced with a distribution of net equity.

- (4) TOD AHD loan funds will be disbursed through escrow at the time of the AHD's permanent financing conversion, or as allowed by the Department's Early Disbursement Policy set forth in Administrative Notice No. 26-01. The Early Disbursement Policy does not apply to TOD RIP grants.
- (d) Related Infrastructure Projects: Grants for Related Infrastructure Projects shall be subject to the following terms:
- (1) The total RIP grant amount shall be limited to \$50,000 per Assisted Unit in the proposed AHD.
  - (2) The Applicant must demonstrate that the grant does not result in Developers benefiting from the 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.
  - (3) The Department shall not make the first disbursement of RIP funds until it has received satisfactory documentation of all required public agency entitlements for the AHD and RIP, and all permanent funding commitments for the AHD supported by the RIP. If the AHD 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.
  - (4) RIP funds will be disbursed as progress payments for eligible costs paid or incurred and in accordance with the relevant Disbursement Agreement.
  - (5) Prior to the first disbursement of RIP funds, the Recipient shall cause the recordation of the Infrastructure Covenant against the AHD for the applicable affordability term.

### **Section 107. Maximum Loan/Grant Amounts**

- (a) Loans for AHD component shall be subject to the following limits:
- (1) Per Unit Loan Limit
    - (A) The per Unit funding limits shall be defined in the NOFA.
    - (B) The per Unit funding limits will be calculated based upon the Units' level of income restriction, number of bedrooms per Unit, and the county in which the AHD is located.

- (C) For an AHD required to be constructed as a condition of approval of one or more market rate developments pursuant to an inclusionary housing ordinance, or similar local requirement, Units required under the ordinance or other requirements shall not be counted in determining applicable loan limits, except for the following:
  - (i) Units restricted under the Program at a lower rent level than required by the ordinance.
  - (ii) Units developed under a land dedication to the local government agency in which the project is located.
- (D) For purposes of Section 107(a)(1)(C), site-specific affordability requirements of public land sales and affordability requirements under the Surplus Land Act are not considered to be inclusionary housing ordinances or similar local requirements.
- (E) AHDs developed pursuant to an inclusionary housing ordinance applying for any Department funds, including those meeting one of the above Section 107(a)(1)(C)(i-ii), must disclose such at application, or the Department's award to the Project will be void.

(2) Per Project Loan Limit

- (A) In each NOFA, the Department shall establish a minimum and maximum per Project subsidy amount.
- (b) Grant amounts for RIP are set forth in Section 106 (c).

**Section 108. Repayable Loan Interest Rate and Loan Repayments**

- (a) Repayable loans shall bear simple interest on the unpaid principal balance at a rate of 3 percent per annum.
- (b) Interest shall accrue from the date that funds are disbursed by the Department to or on behalf of the Sponsor.
- (c) For the first 30 years of the loan term, payments in the amount of 0.42 percent of the original principal loan balance shall be payable to the Department commencing on the last day of the Initial Operating Year and continuing on each anniversary date thereafter. The payment shall remain constant for the first 30 years regardless of any paydown of the original loan amount. The balance of accrued interest shall be payable out of Operating Income remaining after payment of approved Operating Expenses, debt service on other

loans, and reserve deposits. Commencing on the 30th anniversary of the last day of the Initial Operating Year, and continuing annually thereafter, the monitoring fee shall be payable annually in an amount equal to the lesser of the following, regardless of whether the loan has been prepaid in full or in part:

- (1) an amount equal to the full amount of interest accruing on the original principal loan amount; or
  - (2) the amount determined by the Department to be necessary to cover the costs of continued monitoring of the Project for compliance with the requirements of the Program which amount shall in no event be less than that in effect for the immediately preceding year. HUD Sections 811 and 202 projects will be subject to the requirements of this subsection.
- (d) Except for the required payment of 0.42 percent of the original principal loan balance, the Department shall permit the deferral of accrued interest for such periods and subject to such conditions as will enable the Sponsor to maintain affordable rents, maintain the Fiscal Integrity of the Project, and pay allowable distributions pursuant to UMR Section 8314.
- (e) All Program loan payments (including the 0.42 percent loan payment) shall be applied in the manner specified in the promissory note.
- (f) The total outstanding principal and interest, including deferred interest, shall be due and payable in full to the Department at the end of the loan term, including any extension granted by the Department.

### **Section 109. Appraisal and Market Study Requirements**

- (a) With the application submission (and prior to permanent loan closing if requested), the Applicant shall submit to the Department an appraisal or market study, or both, to:
- (1) Establish a market value for the land to be purchased or leased as part of the Project.
  - (2) Assist with establishing other reasonable development costs.
  - (3) Assess Fiscal Integrity.
  - (4) Verify an adequate tenant market.
- (b) Any appraisal required by the Department shall be prepared at the Applicant's expense by an individual or firm which:

- (1) Has the appropriate license and the knowledge and experience necessary to competently appraise low-income residential rental property;
  - (2) Is aware of, understands, and correctly employs recognized and generally accepted methods and techniques that are necessary to produce a credible appraisal;
  - (3) In reporting the results of the appraisal, communicates each analysis, opinion and conclusion in a manner that is not misleading as to the true value and condition of the property; and
  - (4) Is an independent third party having no identity of interest with the Sponsor, the partners of the Sponsor, the intended partners of the Sponsor, or with the general contractor.
- (c) Any market study required by the Department, dated within one year of the Application due date stated in the NOFA, shall conform to the market study guidelines adopted by TCAC (including those for acquisition/rehabilitation projects pursuant to Title 4 CCR, Section 10322(h)(10)), summarize the existing and planned affordable housing developments in the market area, specify any of those with Project type or target population preference or restrictions, document that there is sufficient demand for the application's Project type and target population in the geographic area where the proposed Project is or will be located, and be prepared at the Sponsor's expense by an individual or firm which:
- (1) Has the knowledge and experience necessary to conduct a competent market study for low-income residential rental property;
  - (2) Is aware of, understands, and correctly employs recognized and generally accepted methods and techniques that are necessary to produce a credible market study;
  - (3) In reporting the results of the market study, communicates each analysis, opinion and conclusion in a manner that is not misleading as to the true market needs for low-income residential property; and
  - (4) Is an independent third party having no identity of interest with the Sponsor, the partners of the Sponsor, the intended partners of the Sponsor, or with the general contractor.

## **Article III. General Requirements**

### **Section 110. Performance Requirements**

- (a) Recipients/Sponsors shall, within the time set forth in the Standard Agreement, but not more than one year from the date of the Program award, begin construction of the Project.
- (b) Recipients/Sponsors shall, within the time set forth in the Standard Agreement, but not more than four years from the date of the Program award, complete construction of the Project. Completion of construction must be evidenced by a certificate of occupancy for the AHD or Statement of Completion or Certificate of Completion for the RIP, or equivalent Project completion documentation.
- (c) The Standard Agreement and, if applicable, the Disbursement Agreement and Infrastructure Covenant must be executed within one year from the date of award. Failure to meet this requirement may result in negative points or the Department's recapture of awarded funds.
- (d) Program funds must be disbursed in accordance with the deadlines specified in the Standard Agreement, and, subject to any applicable liquidation deadline, in no event later than the following disbursement deadlines:
  - (1) Program funds must be fully disbursed within five years from the date of award.
  - (2) The maximum disbursement extension deadline is seven years from the date of award.
- (e) The Department may approve a disbursement extension deadline request as allowed by the Standard Agreement and pursuant to subdivision (d) immediately preceding.
- (f) Failure to meet Performance requirements may result in the assignment of negative points or award disencumbrance.

### **Section 111. Application Process**

- (a) The Department shall offer funds through a Notice of Funding Availability (NOFA) that specifies, among other things, an over-the-counter or competitive process, amount of funds available, application requirements, scoring and selection process, 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.

## **Section 112. Application Selection Criteria**

The NOFA will set forth a specific process for allocation of funds. Additionally, an AHD or RIP which has applied for funding from other state funding programs, and was determined to meet eligibility requirements but was not awarded due to limited program resources, or was awarded but a financing gap still exists, is eligible for a streamlined and expedited administrative review process.

- (a) TOD award selection will prioritize Mitigating Project selection according to:
  - (1) First priority to Mitigating Projects in Location-Efficient Areas within the same Region as the Impacting Project.
  - (2) Second priority to Mitigating Projects not in a Location-Efficient Area, but within the same Region as the Impacting Project.
  - (3) Third priority to Mitigating Projects in Location-Efficient Areas that are outside the Impacting Project Region but within an adjacent Region, provided the project site is located within the proximity radius described in LCI guidance.
- (b) Within each location-specific priority specified in subdivision (a) immediately preceding, the Department shall prioritize AHD projects as follows:
  - (1) Affordability, with highest priority given to AHD projects that include a greater percentage of units restricted to very low-, low- or lower income households, as set forth in the NOFA.
  - (2) AHD projects that result in improved vehicle miles traveled efficiency.
  - (3) AHD projects with committed state or federal funding that are still in need of gap funding to begin construction.
  - (4) AHD projects that demonstrate project readiness above and beyond the threshold requirements set forth in Section 103.1. Such project readiness indicators include, but are not limited to, the following;
    - (A) Issued Building Permits. Full building permits for all residential structures; grading permits only if accepted by the local jurisdiction.
    - (B) Executed Construction Contract. Signed contract with a licensed general contractor.

- (C) Building plans certified by licensed architect, electrical engineer, and civil engineer to be at 50 percent Construction Document level
  - (D) Notice to Proceed or equivalent documentation showing construction start is authorized.
  - (E) Proof of required approvals including CEQA clearance, zoning entitlements, and design review approvals, if applicable.
- (5) AHD projects proposed on publicly owned land, including state and local surplus properties, may be prioritized to maximize public benefit and reduce overall development costs.
- (c) Additionally, the following criteria shall apply when the NOFA specifies a competitive allocation:
- (1) Rental and homeownership AHD applications will be ranked according to selection criteria set forth in the NOFA.

**Section 113. Legal Documents**

(a) Affordable Housing Developments:

- (1) Upon the award of Program funds to assist an AHD, 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 Standard Agreement shall contain the following:
  - (A) A description of the approved 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 AHD through the Regulatory Agreement as consideration for the Program Loan;
  - (D) Provisions governing the construction work and, as applicable, the acquisition of the AHD site, and the disbursement of Loan proceeds;
  - (E) Special conditions imposed as part of the Department's approval of the AHD;
  - (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 AHD, including the commencement and completion of construction or rehabilitation work, and the occupancy by eligible households;
  - (J) The approved AHD 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 relating to the placement of a sign on or in the vicinity of the AHD site which indicates that the Department has provided financing for the AHD; or provisions relating to the Department's arrangement, in its sole and absolute discretion, for publicity of the Program Loan; and;
  - (O) 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 the applicable duration irrespective of the loan term. The Regulatory Agreement shall be recorded against the property of the AHD in such priority as approved by the Department and prior to the disbursement of funds, and it shall include, without limitation, 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 AHD 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 AHD 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 AHD, and the performance of Sponsor's Program obligations.

(b) Related 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) 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 AHD(s) which qualified the Project for the award of Program funds. The AHD 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 an Infrastructure Covenant is recorded for the benefit of the Department and in service of the requirements and goals of the Program. The Infrastructure Covenant will impose development, use, occupancy, and affordability restrictions on the real property site(s) of the AHD which is benefited by the RIP, and it must be recorded prior to any disbursement of the Grant funds. The Infrastructure Covenant will ensure the affordability of the AHD for at least 55 years; other Infrastructure Covenant restrictions will be consistent with the requirements and design of the TOD Program. The Infrastructure Covenant shall be recorded on the fee interest in the real property site(s) of the AHD.

**Section 114. State and Federal Laws, Rules, Guidelines and Regulations**

- (a) The Recipient/Sponsor must comply with all applicable local, state, and federal laws, constitutions, codes, standards, rules, guidelines, and regulations as set forth in the MHP Guidelines Section 7314.