

Infill Infrastructure Grant Program Small Jurisdiction Set Aside and Qualifying Infill Areas Final Guidelines

To ease in review, language identified in red text throughout this document represents text that is consistent across all multifamily funding programs.



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Infill Infrastructure Grant Program - Small Jurisdiction and Qualifying Infill Areas

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Article 1. General.

Section 100. Purpose and Scope.

The purpose of these Infill Infrastructure Grant Program of 2019 Guidelines (IIG-2019 or Guidelines) is to implement and interpret Part 12.5 (commencing with Section 53559) of Division 31 of the Health and Safety Code (HSC), which establishes the Infill Infrastructure Grant Program of 2019, hereinafter referred to as the Infill Infrastructure Grant Program (IIG-2019 or Program).

The Program's primary objective is to promote infill housing development by providing financial assistance for Capital Improvement Projects (Capital Improvement Projects or CIP), that are an integral part of, or necessary to facilitate the development of, a Qualifying Infill Project (Qualifying Infill Project or QIP) or Qualifying Infill Area (Qualifying Infill Area or QIA).

Under the Program, grants are available as gap funding for infrastructure improvements necessary for specific residential or mixed-use infill development projects or areas. Both Qualifying Infill Projects and Qualifying Infill Areas must have either been previously developed or be largely surrounded by sites that are developed with Urban Uses. Eligible improvements include development of Parks or Open Space, water, sewer or other utility service improvements, streets, roads, parking structures, transit linkages, transit shelters, traffic mitigation features, site preparation or demolition, sidewalks, and streetscape improvements.

- (a) The IIG-2019 Guidelines address Qualifying Infill Areas in Large Jurisdictions and both Qualifying Infill Areas and Qualifying Infill Projects in Small Jurisdictions, as specified more fully below:

- (1) Qualifying Infill Areas in Large Jurisdictions.

- (A) Funds will be allocated through a competitive process, based on the merits of the individual application.

Applications shall be rated using the Scoring Criteria outlined in the NOFA. The Scoring Criteria will include the following categories: extent to which the project serves households at the lowest income levels, state policy priorities, project Applicant and property manager experience, project readiness, adaptive reuse/infill/proximity to amenities, sustainable building methods, cost containment, and prohousing policies.

- (2) Qualifying Infill Areas and Qualifying Infill Projects in Small Jurisdictions.

- (A) Applications for Qualifying Infill Areas and Qualifying Infill Projects in Small Jurisdictions will be accepted and evaluated on a continuous basis via an Over-the-Counter process.

- (b) Assembly Bill 434 (AB 434) is relevant to the IIG-2019 Program Guidelines in the following way:
 - (1) The Infill Infrastructure Grant Program Final Guidelines, dated March 30, 2022, and as subsequently amended (“IIG-2007 Guidelines”), were adopted in accordance with AB 434, and address Large Jurisdiction Qualifying Infill Projects for purposes of IIG-2019; and
 - (2) Section 206 of the [IIG-2007 Guidelines](#) (Large Jurisdiction Qualifying Infill Projects) is incorporated by reference as if set forth in full herein, and it shall apply with equal force as all other provisions set forth herein.
- (c) Nothing in these Guidelines is intended to be, nor should be, interpreted to amend or repeal rules, regulations or requirements set forth in prior versions of IIG guidelines or their amendments; these Guidelines shall have no retroactive application. These Guidelines shall, however, replace all prior versions of guidelines for the purposes of applying to the funding offered subsequent to their publication.

Section 101. Uniform Multifamily Regulations (UMRs).

- (a) The Uniform Multifamily Regulations (UMRs) (Cal. Code Regs., tit. 25, § 8300 et seq), effective November 15, 2017, and as subsequently amended, are hereby incorporated by reference, except to the extent any UMR provision would be inconsistent with these Guidelines.

Section 102. Definitions.

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

- (a) “AB 434” means Assembly Bill No. 434, Chapter 192, Statutes of 2020.
- (b) “Accessible Housing Unit(s)” refers collectively to “Housing Units with Mobility Features” and “Housing Units with Hearing/Vision Features” as defined below:
 - (1) A “Housing Unit with Mobility Features” means and refers to a housing Unit that is located on an accessible route and complies with the requirements of 24 C.F.R. § 8.22 and all applicable provisions of Uniform Federal Accessibility Standards (UFAS) or the comparable provisions of the Alternative Accessibility Standard, including but not limited to Sections 809.2 through 809.4 of the 2010 Standards for Accessible Design. A Housing Unit with Mobility Features can be approached, entered, and used by persons with mobility disabilities, including individuals who use wheelchairs. Such units must also comply with CBC 11B.
 - (2) A “Housing Unit with Hearing/Vision Features” means and refers to a housing Unit that complies with 24 C.F.R. Section 8.22, and all applicable provisions of UFAS or the comparable provisions of the Alternative

Accessibility Standard, including but not limited to Section 809.5 of the 2010 Standards for Accessible Design. Such Units must also comply with CBC 11B.

- (c) “Affirmatively Furthering Fair Housing” is defined, in accordance with Government Code (GC) Section 8899.50, subdivision (a)(1), to mean taking meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics. Specifically, Affirmatively Furthering Fair Housing means taking meaningful actions that, taken together, address significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially and ethnically concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws. The duty to Affirmatively Further Fair Housing extends to all of a public agency’s activities and programs relating to housing and community development.
- (d) “Affordable Housing Development” means the same as “Rental Housing Development” defined below.
- (e) "Affordable Unit" means a Unit that is made available at an affordable rent, as defined in HSC 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 HSC 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.
- (f) “Agricultural Employment” means employed in the cultivation and tillage of the soil; the production, cultivation, growing and harvesting of any agricultural or horticultural commodities; the raising of livestock, bees, furbearing animals, or poultry; dairying, forestry, and lumbering operations; and any work on a farm as incident to or in conjunction with such farming operations, including the delivery and preparation of commodities for market or storage. Agricultural Employment also includes work done by any person who works on or off the farm in the processing of any agricultural commodity until it is shipped for distribution, whether or not such person is encompassed within the definition specified in subdivision (b) of Section 1140.4 of the Labor Code.
- (g) “Agricultural Household” means an Agricultural Worker or workers and other persons who reside or will reside with an Agricultural Worker in an Assisted Unit.
- (h) “Agricultural Worker” means an individual who derives, or prior to retirement or Disability derived, a substantial portion of his/her income from Agricultural Employment.

- (i) “Alternative Accessibility Standard”, also referred to as the HUD Deeming Notice (HUD-2014- 0042-0001), means the Alternative Accessibility Standard for accessibility set out in HUD’s notice at 79 Fed. Reg. 29671 (May 23, 2014), when used in conjunction with the requirements of 24 C.F.R. pt. 8, 24 C.F.R. Section 8.22, and the requirements of 28 C.F.R. pt. 35, including 28 C.F.R. Section 35.151 and the 2010 Standards for Accessible Design as defined in 28 C.F.R. Section 35.104.
- (j) “Applicant” means the entity or entities applying to the Department for the Program funding. Such entity or entities may also be the Sponsor, defined in Section 7303 of the MHP Guidelines. Upon receiving an Award of funds, the Applicant or co-Applicants will, both individually and collectively, be referred to as the “Recipient” in the Department’s legal documents relative to an Award of a grant, or as “Sponsor” in the Department’s legal documents relative to an Award of a loan. For the purpose of these Guidelines, an Applicant or co-Applicant that only receives an Award of grant funding will, both individually and collectively, be referred to as the “Recipient.”
- (k) “Area Median Income” or “AMI” means the most recent applicable county median family income published by the California Tax Credit Allocation Committee (TCAC). For Tribal Applicants, if the HUD income for a county/parish located within a Tribal Entity’s service area is lower than the United States median, the Tribal Entity may use the United States median income limit.
- (l) “Assisted Unit” means a housing Unit that is subject to Program Rent and/or occupancy restrictions as a result of financial assistance provided under the Program.
- (m) "Award" means a commitment of money in the form of a Program grant or a loan that is made by the Department to an Applicant.
- (n) “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 Application due date.
- (o) “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.
- (p) “Capital Asset” means a tangible physical property with an expected useful life of 15 years or more. Capital Asset also means a tangible physical property with an expected useful life of 10 to 15 years for costs not to exceed 10 percent of the Program grant. Capital Asset includes major maintenance, reconstruction,

demolition for purposes of reconstruction of facilities, and retrofitting work that is ordinarily done no more often than once every 5 to 15 years or expenditures that continue or enhance the useful life of the Capital Asset. Capital Asset also includes equipment with an expected useful life of two years or more. Costs allowable under this definition include costs incidentally but directly related to construction or acquisition, including, but not limited to, planning, engineering, construction management, architectural, and other design work, environmental impact reports and assessments, required mitigation expenses, appraisals, legal expenses, site acquisitions, and necessary easements.

- (q) "Capital Improvement Project" or "CIP" or "Project" means the construction, Rehabilitation (as that term is defined below), demolition, relocation, preservation, acquisition, or other physical improvement of a Capital Asset that is an integral part of, or necessary to facilitate the development of, a Qualifying Infill Project or Qualifying Infill Area. Capital Improvement Projects that may be funded under the Program include, but are not limited to, those described in Section 200 of these Guidelines.
- (r) "Chronic Homelessness" means the condition experienced by people defined as "Chronically Homeless" under the federal Continuum of Care Program, at 24 CFR Part 578.3.

It also includes the condition of individuals and families:

- (1) Residing in a place not meant for human habitation, emergency shelter, or Safe Haven, after experiencing Chronic Homelessness as defined in 24 CFR Section 578.3, and subsequently residing in a permanent housing project within the last year.
 - (2) Residing in Transitional Housing who were experiencing Chronic Homelessness as defined in 24 CFR Section 578.3 prior to entering the Transitional Housing; or
 - (3) Residing in an existing Supportive Housing project receiving MHP funding for Rehabilitation or being replaced by an MHP-funded project, provided that, upon initial occupancy, the individuals were experiencing chronic homeless as defined in 24 CFR Section 578.3 or qualified under Section 7303(f).
- (s) "Commercial Space" means any nonresidential space located in or on the property of an Affordable Housing Development that is, or is proposed to be, rented or leased by the owner of the Affordable Housing Development and that is or will be used to serve clients or customers. The income from the Commercial Space shall be included as Operating Income.
 - (t) "Community-Based Developer" means a nonprofit and/or for-profit entity (including a Tribal Entity) that has, for the past twenty-four (24) consecutive months, been

located and operating exclusively from or primarily in a Low or Moderate Resource or High Segregation & Poverty area (their community), as designated in the most recently updated TCAC/HCD Opportunity Area Map or such other map as federal designations may issue that have been approved by the Department for this purpose. The entity must have at least five (5) years of experience in the delivery of culturally competent services and/or community development programs to Low or Lower Income households in their community (or census tract). For the purposes of these Guidelines, “culturally competent services” means services that respect diversity in the community and respond effectively across cultures, regardless of differences in language, communication styles, abilities, disabilities, beliefs, attitudes, and behaviors. Please note Community-Based Developers are subject to additional application requirements as set forth in Section 7318 of the MHP Guidelines.

- (u) “Covenant” or “Affordability Covenant” means an instrument which imposes development, use, and affordability restrictions on the real property site(s) of the Qualifying Infill Project or of the designated housing in the Qualifying Infill Area, and which is recorded against the fee interest in such real property site(s). The Covenant is executed as consideration for the IIG Program award to the Recipient.
- (v) “Department” or “HCD” means the California Department of Housing and Community Development.
- (w) “Developer” means the legal entity that the Department relies upon for capacity, experience, and site control of either the Qualifying Infill Project or the Qualifying Infill Area, and which controls the Rental Housing Development during development and through occupancy. A nonprofit or for-profit Developer may include a Tribal Entity as defined herein.
- (x) “Disability” means the definitions of Disability in the Americans with Disabilities Act (42 U.S.C. Section 12102) or the California Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2 of the GC) and shall be broadly construed to include:
 - (1) individuals with a Mental or Physical Disability that limits a Major Life Activity;
 - (2) individuals regarded or perceived as having a mental or physical Disability that limits a Major Life Activity. This includes being perceived as having or having had a disorder or condition that has no present disabling effect but may become a Mental or Physical Disability;
 - (3) individuals having a record of a Mental or Physical Disability that limits a Major Life Activity. A “record” of mental or physical Disability includes previously having, or being misclassified as having, a record or history of a mental or physical Disability; and/or

- (4) individuals who are, or are perceived as, associated with a person who has, or is perceived to have, a mental or physical Disability.
- (5) For purposes of this definition:
 - (A) “Mental Disability” includes, but is not limited to, having any mental or psychological disorder or condition, Intellectual Disability, organic brain syndrome, emotional or mental illness, or specific learning disabilities, and chronic or episodic conditions that limits a Major Life Activity. This includes disabilities such as, autism spectrum disorders, schizophrenia, clinical depression, bipolar disorder, post-traumatic stress disorder, and obsessive-compulsive disorder.
 - (B) “Physical Disability” includes, but is not limited to, having any physiological disease, disorder, condition, cosmetic disfigurement, anatomical loss that affects one or more of the following body systems or the operation of an individual organ within a body system: neurological; immunological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; circulatory; skin; endocrine; brain; and normal cell growth; and that limits a Major Life Activity.
 - (C) “Major Life Activity” shall be construed broadly and includes, but is not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, interacting with others, working, and social activities.
 - (D) “Limits” shall be determined without regard to mitigating measures, such as medications, assistive devices, or reasonable accommodations, unless the mitigating measure itself limits a Major Life Activity. A Mental or Physical Disability “limits” a Major Life Activity if it makes the achievement of the Major Life Activity difficult.
 - (E) Disabilities also include Intellectual/Developmental Disabilities as defined in these Guidelines and acquired brain injuries (which have both a Physical and Mental Disability component); chronic and recurring disabilities, and medical conditions as defined in GC Section 12926(i), such as cancer.
- (y) “Disbursement Agreement” means an agreement executed by the Recipients and the Department which governs the terms, disbursement, and uses of Program funds, and includes at a minimum, conditions for payment, a specific description of the Capital Improvement Project, a description of all sources and uses, and a

Project budget containing cost items for the design, development and construction of the Capital Improvement Project and proposed affordable housing.

- (z) “Efficiency Unit” means a Unit containing only one habitable room. A room in a structure that is a single-family house at the time of application will not be considered to be an Efficiency Unit eligible for program funds.
- (aa) “Eligible Households” means households whose incomes do not exceed 60 percent of AMI, as calculated in accordance with the regulations and procedures governing the low-income housing tax credit program, as administered by TCAC, or other lower income limits agreed to by the Affordable Housing Development Sponsor and the Department. Household income will be calculated based on Units in accordance with TCAC rules and procedures. (The rules and procedures set forth in 25 California Code of Regulations (CCR) Section 6932 et. seq., do not apply.) For Tribal Households, as calculated in accordance with the Native American Housing and Self Determination Act, using the greater of the income of the county/parish located within a Tribal Entity’s service area or the United States median income.
- (bb) “Emerging Developer”, as determined by the Department in its reasonable discretion, means an entity, including a Tribal Entity, that has developed, owned, or operated at least one (1) but not more than three (3) Affordable Housing Developments that are equivalent to the proposed Affordable Housing Development in size, scale, amenity, and target population. The Department may determine experience by evaluating the experience of the entity itself, the experience of senior staff within the organization, or in compliance with MHP Guidelines Section 7303 subdivision (d)(3) permitting an entity to contract with another entity that meets the experience requirements.
- (cc) “Enforceable Funding Commitment” 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:
 - (1) 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;
 - (2) Deferred-payment financing, residual receipts payment financing, grants and subsidies from public agencies;
 - (3) Funds awarded by another Department program. Proof of Award must be issued prior to final rating and ranking of the Program application.
 - (4) 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 lease that meets the requirements of UMR Section 8316 would be considered a Land Donation (\$1 per year).

- (5) 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 Department may require the Applicant to evidence the availability of the proposed amount of owner equity or developer funds.
- (6) Funds for transportation projects, if those are an eligible Program cost. Funds must be programmed for allocation and expenditure in the applicable project plan consistent with the terms and timeframes of the Standard Agreement.
- (7) Enforceable Funding Commitment letters must contain the following:
 - Name of the Applicant or Sponsor,
 - Project name,
 - Project site address, assessor's parcel number, or legal description; and
 - 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.

- (dd) "Extremely Low Income" means households with Gross Incomes not exceeding 30 percent of AMI as set forth in HSC Section 50106.
- (ee) "Farmworker Housing" means a Rental Housing Development where at least 25 percent of the units are reserved for Agricultural Households.

- (ff) "Fiscal Integrity" means that the total Operating Income plus funds released pursuant to the Regulatory Agreement from the operating reserve account is sufficient to:
- pay all current Operating Expenses;
 - pay all current debt service (excluding deferred interest);
 - fully fund all reserve accounts (other than the operating reserve account) established pursuant to the Regulatory Agreement; and
 - 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.
- (gg) "Gross Income" means all income as defined in CCR Title 25 Section 6914.
- (hh) "High-Density Development" means developments with maximum allowable densities pursuant to GC Section 65583.2, subdivision (c).
- (ii) "Homeless" or "Homelessness" means the condition of individuals and households who meet the definition of "homeless" in 24 CFR Part 578.3. "Homelessness" includes "Chronic Homelessness" as defined in these Guidelines. Occupants of a development undergoing Rehabilitation with Program funds, or being replaced by an MHP-funded development, shall be deemed to qualify under this definition if they qualified upon initial occupancy.
- (jj) "Housing First" is defined in accordance with Welfare and Institutions Code section (WIC) Section 8255.
- (kk) "HUD" means the U.S. Department of Housing and Urban Development.
- (ll) "Indian Area" means the area within which a Tribally Designated Housing Entity is authorized by one or more Indian tribes to provide assistance for affordable housing pursuant to the Native American Housing and Self Determination Act (NAHASDA) at 25 U.S.C. section 4103.
- (mm) "Indian Country" means all land located in "Indian Country" as defined by 18 U.S. Code (USC) 1151.
- (nn) "Intellectual/Developmental Disability" means a Disability that is covered under the federal Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 USC Sections 15001 and 15002(8) and implementing regulations at 45 CFR Section 1325.3) or WIC 4512(a), and disabilities that make a person eligible for services from the California Regional Center System. It includes a severe, chronic Disability that:
- (1) is attributable to a mental or physical impairment or combination of mental and physical impairments;

- (2) manifests before the age of twenty-two (22);
- (3) is likely to continue indefinitely;
- (4) results in substantial functional limitations in three or more of the following areas of Major Life Activity:
 - self-care,
 - receptive and expressive language,
 - learning,
 - mobility,
 - self-direction,
 - capacity for independent living, or
 - economic self-sufficiency; and
- (5) reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic services, individualized supports, or other forms of assistance that are of lifelong or extended duration and are individually planned and coordinated.

The definition includes Intellectual Disabilities, cerebral palsy, epilepsy, and autism spectrum disorder. It also includes conditions that are closely related to Intellectual Disability or that require similar treatment (WIC Section 4512(a)).

- (oo) "Intellectual Disability" means a condition characterized by either significant limitations in intellectual functioning (reasoning, learning, problem-solving) or adaptive behavior (everyday social and practical skills).
- (pp) "Joint Venture" means an association of two or more persons, or entities who combine their property, skill, or knowledge to carry out a single business enterprise for profit. Where the Sponsor of a Qualifying Infill Project is formed as a Joint Venture in accordance with MHP Guidelines Section 7303(a), that Sponsor is subject to and shall comply with the requirements of MHP Guidelines. The borrowing entity Limited Partnership is not a Joint Venture within the meaning of Section 7303(a).
- (qq) "Large Jurisdiction" means a county that is not a Small Jurisdiction, or any city within that county.
- (rr) "Local Public Entity" or "Locality" means any county, city, city and county, Tribal Entity, a community redevelopment agency, or successor agency organized pursuant to Part 1 (commencing with Section 33000) of Division 24, or housing authority organized pursuant to Part 2 (commencing with Section 34200) of Division 24, and any instrumentality thereof, which is authorized to engage in or assist in the development or operation of housing for persons and families of Low Income. It also includes two or more local public entities acting jointly.

- (ss) “Lower Income” or “Low Income” means households with Gross Incomes not exceeding 80 percent of AMI as set forth in HSC Section 50079.5.
- (tt) “Major Transit Stop” means a site containing any of the following:
 - (1) An existing rail or bus rapid Transit Station.
 - (2) A ferry terminal served by either a bus or rail transit service.
 - (3) The intersection of two or more major bus routes with a frequency of service interval of 15 minutes or less 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 application due date.
- (uu) “Moderate Income” means households with Gross Income not exceeding 120 percent of AMI as set forth in HSC Section 50093.
- (vv) “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 HSC and the Multifamily Housing Program Final Guidelines dated March 30, 2022, and as subsequently amended.
- (ww) “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. Non-allowed deductible areas 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.
- (xx) “NOFA” means a Notice of Funding Availability issued by the Department to announce that funds are available and that applications for that funding may be submitted.
- (yy) “Nondiscretionary Local Approval Process” means a process for development approval involving no personal judgment by the public official as to the wisdom or manner of carrying out the project. The public official merely ensures that the proposed development meets all the "objective zoning standards," "objective subdivision standards," or "objective design review standards" in effect at the time that the application is submitted to the local government, but uses no special discretion or judgment in reaching a decision. A nondiscretionary process involves only the use of fixed standards or objective measurements, and the public official cannot use personal, subjective judgment in deciding whether or how the project should be carried out. “Objective Zoning Standard, Objective Subdivision Standard, and Objective Design Review Standard” means standards that involve no personal

or subjective judgment by a public official and that are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development Applicant or proponent and the public official prior to submittal.

(zz) “Older Adults in Need of Supportive Services” means individuals who are age 55 or older and who need Supportive Services to maintain and stabilize their housing, including individuals meeting the following criteria:

- (1) Eligible under Medi-Cal 1915(c) waiver programs including the Home and Community-Based Alternatives Waiver, the Multipurpose Senior Services Program (MSSP), the AIDS Waiver, the Assisted Living Waiver, the Home and Community-Based Services for the Developmentally Disabled (HCBS-DD) Waiver, and the Self-Determination Program (SDP) Waiver;
- (2) Eligible for services under the Program of All-Inclusive Care for the Elderly or Community-Based Adult Services (CBAS);
- (3) Eligible for services through Enhanced Care Management or Community Supports (also known as “in lieu of services”) provided through Cal-AIM or similar programs;
- (4) Eligible for services through the In-Home Supportive Services Program;
- (5) Eligible for services similar to those listed in (1)-(4) above through the California Department of Developmental Services (CDDS) or the Regional Centers, including Independent Living Services and Supported Living Services;
- (6) Older Veterans who need services similar to those listed in (1)-(5) above but are served through Veterans Affairs (VA); and/or
- (7) Older adults at risk of institutionalization and eligible for long term care.

Eligibility for these programs must be established by the agency responsible for determining eligibility for the benefits provided by them.

(aaa) “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.

(bbb) “Operating Expenses” means the same as defined in UMR Section 8301(k).

- (ccc) “Operating Income” means all income generated in connection with operation of the Affordable Housing Development including rental income for Assisted Units and non-Assisted Units, rental income for Commercial Space or commercial use, laundry and equipment rental fees, rental subsidy payments, and interest on any accounts, other than approved reserve accounts, related to the Affordable Housing Development. “Operating Income” does not include security and equipment deposits, payments to the Sponsor for Supportive Services not included in the Department-approved operating budget, cash contributed by the Sponsor, or tax benefits received by the Sponsor.
- (ddd) “Park” 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.
- (eee) “Permanent Supportive Housing” or “Supportive Housing” means the same as defined under HSC Section 50675.14(b)(2) and refers to Assisted Units.
- (fff) “Principal” means employees of the Sponsor who are in a position responsible for the oversight and management of development activities.
- (ggg) “Program” means the Infill Infrastructure Grant Program of 2019 as implemented by these Guidelines and by Section 206 of the IIG-2007 Guidelines.
- (hhh) “Prohousing Designation Program” means the program administered by the Department, pursuant to GC Section 65589.9, and CCR, Title 25, Sections 6600 through 6607.
- (iii) “Project” or “Capital Improvement Project” or “CIP” means the construction, Rehabilitation, demolition, relocation, preservation, acquisition, or other physical improvement of a Capital Asset that is an integral part of, or necessary to facilitate the development of, a Qualifying Infill Project or Qualifying Infill Area. Projects that may be funded under the Program include, but are not limited to, those described in Section 200 of these Guidelines.
- (jjj) “Qualifying Infill Area” means an area designated in the Program application that meets the criteria for a Qualifying Infill Area set forth in Section 200.
- (kkk) “Qualifying Infill Project” means a residential or mixed-use residential development project designated in the Program application that meets the criteria for a Qualifying Infill Project set forth in Section 200.

- (III) "Recipient" means the Eligible Applicant as defined in section 201 of these Guidelines receiving a commitment of Program funds for an approved Capital Improvement Project.
- (mmm) "Regulatory Agreement" means the written agreement between the Department (or other public entity) and the Sponsor in connection with the Qualifying Infill Project. Such Regulatory Agreement is recorded as a lien on the Qualifying Infill Project to control the use and maintenance of the Qualifying Infill Project, including restricting the rent and occupancy of the Assisted Units.
- (nnn) "Rehabilitation" is defined in line with Section 50096 of the HSC, and includes improvements and repairs made to a residential structure acquired for the purpose of preserving its affordability.
- (ooo) "Rent" means the same 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.
- (ppp) "Rental Housing Development" means 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. For the purpose of these Guidelines, "Rental Housing Development" does not include any "health facility" as defined by HSC Section 1250 or any "alcoholism or drug abuse recovery or treatment facility" as defined in HSC Section 11834.02. A Rental Housing Development includes, without limitation, the real property, the improvements located thereon, and all fixtures and appurtenances related thereto.
- (qqq) "Restricted Unit" means the same as that term is defined in UMR Section 8301 excluding units restricted at levels above 60 percent of AMI.
- (rrr) "Rural Area" has the meaning set forth in HSC Section 50199.21.
- (sss) "Senior" means a housing type meeting the requirements of MHP Guidelines Section 7302(e)(3).
- (ttt) "Small Jurisdiction" means a county with a population of less than 250,000 as of January 1, 2019, or any city within that county.
- (uuu) "Special Needs" means a housing type meeting the requirements of MHP Guidelines Section 7302(e)(2) .

(vvv) “Special Needs Population(s)” means one or more of the following groups who need Supportive Services to maintain and stabilize their housing:

- (1) people with disabilities;
- (2) At Risk of Homelessness, as defined above;
- (3) individuals with substance use disorders;
- (4) frequent users of public health or mental health services, as identified by a public health or mental health agency;
- (5) individuals who are fleeing domestic violence, sexual assault, and human trafficking;
- (6) individuals who are experiencing Homelessness and individuals experiencing Chronic Homelessness as defined above;
- (7) homeless youth as defined in GC Section 12957, subdivision (e)(2);
- (8) families in the child welfare system for whom the absence of housing is a barrier to family reunification, as certified by a county;
- (9) individuals exiting from institutional settings or at risk of placement in an institutional setting;
- (10) Older Adults in Need of Supportive Services; or
- (11) other specific groups with unique housing needs as determined by the Department.

Special Needs Populations does not include “Seniors or Veterans” unless they otherwise qualify as a “Special Needs Population” as required by other statutory laws.

(www) “Sponsor” means the same as defined in Section 7303 of the MHP Guidelines.

(xxx) “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.

(yyy) “Supportive Housing” means housing with no limit on length of stay, that is occupied by the target population, and that is linked to onsite or offsite services that assist the Supportive Housing resident in retaining the housing, improving their health status,

and maximizing their ability to live and, when possible, work in the community.

- (zzz) “Supportive Services” means social, health, educational, income support and employment services and benefits, coordination of community building and educational activities, individualized needs assessment, and individualized assistance with obtaining services and benefits (UMR Section 8301(t)).
- (aaaa) “TCAC” means the California Tax Credit Allocation Committee.
- (bbbb) “TCAC/HCD Opportunity Area Map” means the most recently approved TCAC/HCD Opportunity Map that measures and provides a graphical representation of place-based characteristics linked to critical life outcomes, such as educational attainment, earnings from employment, and economic mobility. For projects on federal land, and properties not identified on the TCAC/HCD Opportunity Area Map, the Applicant may use the TCAC/HCD Opportunity Area Map’s census tract nearest to the main entry for the Qualifying Infill Project.
<https://treasurer.ca.gov/ctcac/opportunity.asp>
- (cccc) “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.
- (dddd) “Transitional Housing” means buildings configured as Rental Housing Developments but operated under Program requirements that call for the termination of assistance and recirculation of the Assisted Unit to another eligible Program recipient at some predetermined future point in time, which shall be no less than six months, but no longer than twenty-four (24) months. Affordable Housing Developments serving persons experiencing Homelessness, including Chronic Homelessness, shall comply with the core components of Housing First set forth in Welfare and Institutions Code, Section 8255.
- (eeee) “Tribal Entity” means a Tribe, or a Tribally Designated Housing Entity. An Applicant that is any of the following:
- (1) An Indian Tribe as defined under USC Section 4103(13)(B) of Title 25.
 - (2) A Tribally Designated Housing Entity under 25 USC 4103 (22) and Health and Safety Code section 50104.6.5
 - (3) If not a federally recognized Tribe as identified above, either:
 - Listed in the Bureau of Indian Affairs Office of Federal Acknowledgment Petitioner List, pursuant to Federal Code of Regulations (CFR) Section 83.1 of Title 25; or

- Indian Tribe located in California that is on the contact list maintained by the Native American Heritage Commission for the purposes of consultation pursuant to GC Section 65352.3.

- (ffff) “Tribal Household” means a household with (1) at least one household member who is recognized as a Tribal member by an Indian Tribe; and (2) a gross income not to exceed 60 percent of the Area Median Income, in accordance with HSC section 53559(e)(3)(C). For purposes of this definition, Area Median Income is determined by the greater of the median income of the county (or equivalent geographic location) in which the Indian Area is located, or the median income of the United States, in accordance with NAHASDA.
- (gggg) “Tribal Trust or Restricted Land” means any land title which is either held in trust by the United States for the benefit of any Indian Tribe or individual or held by any Indian tribe or individual subject to restriction by the United States against alienation and over which an Indian Tribe exercises governmental power.
- (hhhh) “Unit” has the same definition as UMR Section 8301(x).
- (iiii) “Urbanized Area” is defined in accordance with Health and Safety Code section 53559.1, subdivision (e). As such, the term refers to 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.
- (jjjj) “Urban Uses” means any residential, commercial, industrial, public institutional, transit or transportation passenger facility, or retail use, or any combination of those uses.
- (kkkk) “Very Low Income” means households with Gross Incomes not exceeding 50 percent of AMI as set forth in HSC Section 50105.
- (llll) “Veteran” means any person who actively served within one or more of the military services of the United States who was called to and released from active duty or active service, for a period of not less than 90 consecutive days or was discharged from the service due to a service-connected Disability within that 90-day period. This includes all Veterans regardless of discharge status.
- (mmmm) “Workforce Housing Opportunity Zone” or “Zone” means an area of contiguous or noncontiguous parcels identified on a city or county’s inventory of land suitable for residential development pursuant to paragraph (3) of subdivision (a) of GC Section 65583 established pursuant to Section 65621.

Article 2. Administration of Funds.

Section 200. Eligible Capital Improvement Projects.

- (a) To be eligible for funding, a Capital Improvement Project must be an integral part of, or necessary to facilitate the development of, the Qualifying Infill Project(s) or Qualifying Infill Area identified in the application.
 - (1) To be eligible for funding, all Large Jurisdiction Qualifying Infill Area applications must include a Qualifying Infill Project, including those Qualifying Infill Projects used to establish the eligibility of a Qualifying Infill Area. This provision does not apply to Small Jurisdiction Qualifying Infill Area applications.
- (b) The Qualifying Infill Area in Large Jurisdictions and both the Qualifying Infill Project(s) and Qualifying Infill Area in Small Jurisdictions, for which a Capital Improvement Project grant may be awarded, must meet all of the following conditions:
 - (1) Be located within an Urbanized Area.
 - (2) Be located in a city, county, or city and county in which the general plan of the city, county, or city and county has an adopted housing element that has been found by the Department to be in substantial compliance with the requirements of Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the GC, pursuant to GC Section 65585 at time of Award. If the Award decisions are made within 120 days of the housing element due date, the Department may refer to the jurisdiction's compliance from the prior cycle. For the purpose of this section alone, jurisdictions that are undergoing Department review of their housing element at the time of Award, and jurisdictions that are receiving Department technical assistance to bring their housing element into compliance at the time of Award, shall both be deemed to be in a presumptive state of substantial compliance by the Department. All Awards premised on presumptive substantial compliance shall include conditions in their respective Standard Agreements requiring that prior to funds disbursement, the subject jurisdiction must have received a final housing element certification letter from the Department.
 - (3) Be located in a city, county, or city and county that, at the time of application, has submitted its annual progress reports for 2017 through the most recently required annual progress report.
 - (4) Large Jurisdiction Qualifying Infill Area Applications and Small Jurisdiction Qualifying Infill Project Applications must include not less than 15 percent of Affordable Units, both existing and pending, as follows:

- (A) For Qualifying Infill Projects or Qualifying Infill Areas that contain both rental and ownership units, units of either or both product types may be included in the calculation of the percentage of the affordability criteria.
 - (B) To the extent included in a Capital Improvement Project grant application, for the purpose of calculating the percentage of Affordable Units, the Department may consider the entire master development in which the development seeking grant funding is included.
 - (C) Where applicable, an Eligible Applicant shall include a replacement housing plan to ensure that dwelling units housing persons and families of Lower or Moderate Income are not removed from the Lower and Moderate Income housing market. Residential units to be replaced shall not be counted toward meeting the affordability threshold required for eligibility for funding under this section.
 - (D) A Qualifying Infill Project or Qualifying Infill Area for which a disposition and development agreement or other project- or area-specific agreement between the Developer and the local agency having jurisdiction over the project has been executed on or before July 31, 2019, shall be deemed to meet the affordability requirement of this paragraph if the agreement includes affordability restrictions that subject the Qualifying Infill Project or Qualifying Infill Area to the production of Affordable Units for Very Low, Lower or Moderate Income households.
- (5) Include Net Densities on the parcels to be developed that are equal to or greater than the densities described below:
- (A) For an incorporated city within a nonmetropolitan county and for a nonmetropolitan county that has a micropolitan area: sites allowing at least 15 units per acre.
 - (B) For an unincorporated area in a nonmetropolitan county not included in clause (A): sites allowing at least 10 units per acre.
 - (C) For a suburban jurisdiction: sites allowing at least 20 units per acre.
 - (D) For a jurisdiction in a metropolitan county: sites allowing at least 30 units per acre.
 - (E) For a Rural Area: sites allowing at least 10 units per acre.

A city with a population greater than 100,000 in a standard metropolitan statistical area or a population of less than 2 million may petition the Department for, and the Department may grant, an exception to the density

requirements set forth in this subsection, if the city believes it is unable to meet the density requirements described herein. The city shall submit the petition with its application and shall include the reasons why the city believes the exception is warranted. The city shall provide information supporting the need for the exception, including, but not limited to, any limitations that the city may encounter in meeting the density requirements specified in subsection (5). Any exception shall be for the purposes of this section only. This subdivision shall become inoperative on January 1, 2026.

- (6) Be located in an area designated for mixed-use or residential development pursuant to one of the following adopted plans:
 - (A) A general plan adopted pursuant to GC Section 65300.
 - (B) A regional sustainable communities' strategy or alternative planning strategy approved pursuant to GC Section 65080.
 - (C) A specific plan adopted pursuant to GC Section 65450
 - (D) A Workforce Housing Opportunity Zone established pursuant to GC Section 65620.
 - (E) A Housing Sustainability District established pursuant to GC Section 66201.
- (7) The Eligible Applicant must identify a mechanism, such as a minimum density ordinance or a recorded, binding Covenant, acceptable to the Department to reliably ensure that future development will occur at an overall Net Density equaling or exceeding that set forth in Section 200(b)(5). This mechanism must be in effect and legally enforceable prior to the initial disbursement of Program funds.
- (8) Eligible Applicants shall designate the proposed residential units in the Qualifying Infill Project, or within the Qualifying Infill Area, that the Eligible Applicant intends to utilize for the purpose of establishing the maximum Program grant amount pursuant to Section 205, and for the purpose of rating Qualifying Infill Area applications from Large Jurisdictions pursuant to Section 402. Any such designated units must be utilized for both purposes in Qualifying Infill Area applications from Large Jurisdictions.
- (9) The application must demonstrate that the percentage of Affordable Units, and units restricted to other income limits and rents as designated for the purpose of determining the maximum Program grant amount in Section 205 and for rating purposes pursuant to Section 402, shall be maintained or exceeded through the completion of each residential development proposed in the application. The Department may modify the requirement set forth in the previous sentence to conform to a similar local public agency requirement,

provided that the Department determines that the local requirement will reliably result in completion of the required Affordable Units as set forth in Section 403.

- (10) **At the time of the application due date, the construction work of the Capital Improvement Project has not commenced**, except for:
- (A) Affordable Units identified in a disposition and development agreement or other project- or area-specific agreement between the Developer and the local agency having jurisdiction over the Affordable Units executed on or before July 31, 2019 that requires the Affordable Units to be built as a condition of local approval for the other units designated in the application, where the Developer of the other units contributed funds or land to cover costs of developing the Affordable Units, in an amount not less than 25 percent of the total development cost of the Affordable Units; or
 - (B) **Emergency repairs to existing structures required to eliminate hazards or threats to health and safety.**
- (c) **The Qualifying Infill Project meets accessibility requirements pursuant to Section 300 below. The Qualifying Infill Projects associated with the Capital Improvement Project must also provide a preference for Accessible Housing Unit(s) to persons with disabilities requiring the accessibility features of those units in accordance with CCR, Title 4, Section 10337(b)(2).**
- (d) For purposes of evaluating Qualifying Infill Area applications from Large Jurisdictions:
- (1) “Qualifying Infill Area” in a Large Jurisdiction application means a contiguous area located within an Urbanized Area (i) that has been previously developed, or where at least 75 percent of the perimeter of the area adjoins parcels that are developed with Urban Uses, and (ii) in which at least one development application has been approved or is pending approval for a residential or mixed-use residential project that meets the definition and criteria in HSC Section 53559(c)(4)(B) for a Qualifying Infill Project.
- (e) For purposes of evaluating applications from Small Jurisdictions via an Over-the-Counter process (please note that this section does not apply to the Small Jurisdiction Qualifying Infill Project Applicants under the AB 434 competitive Super NOFA):
- (1) “Qualifying Infill Area” in a Small Jurisdiction application means a contiguous area located within an Urbanized Area that meets either of the following criteria:
 - (A) The area contains sites included on the inventory of land suitable and available for residential development in the housing element of the

applicable city or county general plan pursuant to paragraph (3) of subdivision (a) of Section 65583 of the GC, and at least 50 percent of the perimeter of the area shall adjoin parcels that are developed with Urban Uses.

- (B) The Capital Improvement Project for which funding is requested is necessary, as documented by an environmental review or some other adopted planning document, to make the area suitable and available for residential development, or to allow the area to accommodate housing for additional income levels, and the area otherwise meets the requirements for inclusion on the inventory of land suitable and available for residential development in the housing element of the applicable city or county general plan pursuant to paragraph (3) of subdivision (a) of Section 65583 of the GC. At least 50 percent of the perimeter of the area shall adjoin parcels that are developed with Urban Uses.
- (2) “Qualifying Infill Project” in a Small Jurisdiction application means a residential or mixed-use residential project located within an Urbanized Area on a site that has been previously developed, or on a vacant site where at least 50 percent of the perimeter of the site adjoins parcels that are developed with Urban Uses.
 - (3) Applications from Small Jurisdictions must include a complete description of the Qualifying Infill Project or Qualifying Infill Area and the Capital Improvement Project along with requested grant funding for the Project. The application must describe how the Project is necessary to support the development of housing, and how it meets the criteria of this section, including;
 - (A) A financial document that shows the gap financing needed for the Project. This requirement is typically satisfied by the Development Budget tab of the application workbook.
 - (i) For a Qualifying Infill Project located in the unincorporated area of the county, the Department shall allow an Eligible Applicant to satisfy the requirement in this paragraph by submitting copies of an application or applications for other sources of state or federal funding for a Qualifying Infill Project.
 - (B) Documentation of all necessary entitlement and permits, and a certification from the Eligible Applicant that the project is shovel ready.
 - (i) For a Qualifying Infill Project located in the unincorporated area of the county, the Department shall allow the Eligible Applicant to meet the requirement described in this paragraph by submitting a letter of intent from a willing affordable housing

Developer that has previously completed at least one comparable housing project, certifying that the Developer is willing to submit an application to the county for approval by the county of a Qualifying Infill Project within the area in the event that the funding requested pursuant to this subdivision is awarded.

- (f) Eligible **Tribal Entity Applicants** applying for a Capital Improvement Project grant, where the eligible Capital Improvement Project and Qualifying Infill Project or Qualifying Infill Area are sited within the State of California in Indian Country or on Tribal Trust or Restricted Land, must also comply with the following:
- (1) Qualifying Infill Project **occupancy must be limited to Tribal Households to the greatest extent possible.**
 - (2) **A 55-year Affordability Covenant shall be recorded against the fee estate of the Qualifying Infill Project (or the real property identified in the application for development of the affordable housing) to ensure the affordability of the rental units thereon. The affordability Covenant shall be recorded with the Bureau of Indian Affairs (BIA) prior to initial disbursement of funds.**
 - (3) If successful, the Eligible Tribal Applicant must meet **the following conditions prior to disbursement of funds, to the extent applicable, and subject to any modifications or waivers provided pursuant to HSC section 50406, subdivision (p) (Assembly Bill 1010 (Chapter 660, Statutes of 2019)) and memorialized in the Standard Agreement:**
 - i. **BIA Consent. BIA has consented to Applicant's execution and recordation (as applicable) of all Department-required documents, including the affordability Covenant required by HSC section 53359, subdivision (e)(3)(C).**
 - ii. **Personal and Subject Matter Jurisdiction. Personal and subject matter jurisdiction over the Standard Agreement, Capital Improvement Project or Qualifying Infill Project, affordability Covenant, or any matters arising from any of them is in state court and the Department has received any legal instruments or waivers, all duly approved and executed, as are or may be legally necessary and effective to provide for such personal and subject matter jurisdiction in state court.**
 - iii. **Title Insurance. The Department has received title insurance for the Capital Improvement Project or Qualifying Infill Project that is satisfactory to the Department. Notwithstanding the foregoing sentence, upon a showing of good cause, for Applicants unable to provide a conventional title insurance policy satisfactory to the Department, this condition may be satisfied by a title status report issued by the BIA Land Title and Records Office and pursuant to a title**

opinion letter issued for the benefit of the Department but paid for by the Applicant.

- iv. Recordation Requirements. Where recordation of instruments is a condition of Award funding or otherwise required under or pursuant to the Standard Agreement, the subject instrument is recorded with the Land Titles and Records Office at the BIA or in the appropriate official records of the county in which the Capital Improvement Project or Qualifying Improvement Project property is located, as may be applicable.

(g) Multiple Department Funding Sources

- (1) Use of multiple funding sources on the same Units utilized in the calculation of the Capital Improvement Project grant amount is permitted, subject to the following limitation:
 - (A) The HCD Repeal of Stacking Prohibition of Multiple Department Funding Sources memorandum, dated August 20, 2021, and as published on the Department's website, is hereby incorporated by reference as if set forth in full herein, and it shall apply with equal force as all other provisions set forth herein. This memorandum includes the following interpretative guidance:

A maximum of four (4) HCD funding sources comprised of no more than two (2) development loans and two (2) housing-related infrastructure grants may be used on a single project. Housing related infrastructure grants are those grants provided through the Affordable Housing and Sustainable Communities Program (AHSC) - Housing Related Infrastructure (HRI) grants, Transit-Oriented Development (TOD) Implementation Program - Infrastructure grants, and Infill Incentive Grant Program of 2007 (IIG-2007) and Infill Infrastructure Grant Program of 2019 (IIG-2019).
- (2) "Department Funding Sources" do not include:
 - (A) Offsite infrastructure funds; or
 - (B) Existing loans or grants under any Department funding source listed above that are at least 14 years old and will be assumed or recast as part of an acquisition and Rehabilitation project.
- (3) Additional limitations on use of multiple department funding sources may be specified in the NOFA.
- (4) Limits on Department Funding, including loan or grant funds, on a per Unit,

per project, and/or per Recipient/Sponsor basis, may be further specified in the NOFA.

- (h) Once a project is awarded Department funds, the Recipient/Sponsor acceptance of these Department funds is acknowledging the project as submitted and approved by the Department and is the project that is to be funded and built. Any partitioning of the project shall make that Award null and void, as the awarded project is no longer feasible as originally submitted and approved and because the awarded funds are unable to be assumed or assigned.

Section 201. Eligible Applicant.

- (a) “Eligible Applicant” or “Applicant” means one of the following:
 - (1) A city, county, city and county, or public housing authority that has jurisdiction over a Qualifying Infill Area, or
 - (A) For the purpose of this Section 201, “public housing authority” shall be interpreted to include a Tribally Designated Housing Entity as defined at 25 USC 4103 (22).
 - (2) A nonprofit or for-profit Developer of a Qualifying Infill Project that has received a letter of support from the governing body of the city, county, or city and county that has jurisdiction over a Qualifying Infill Project. For purposes of this paragraph, “governing body” means a city council or a board of supervisors of a county or city and county.
- (b) Except as otherwise prescribed by these Guidelines, Applicant shall demonstrate that it has successfully developed, operated, and owned at least four (4) Affordable Housing Developments of equivalent size, scale, and occupancy. If applying as a Farmworker Housing project, one (1) of the four (4) must be a development that houses Agricultural Households. Applicant shall have satisfied this experience requirement at the time of its application for the funds. To satisfy experience requirements, Applicant may include the experience of its controlled affiliated entities or its Principals (e.g., employed by, and under the control of the Applicant and responsible for managing development activities), but not the experience of non-management board members.
 - (1) Notwithstanding the foregoing, and solely for the purpose of applying to the Emerging Developer set-aside, an Emerging Developer shall qualify as an Eligible Applicant so long as the Emerging Developer meets the experience requirements set forth in its definition above.
 - (2) Notwithstanding the foregoing, and solely for the purpose of applying to the Community-Based Developer set-aside, a Community-Based Developer shall

qualify as an Eligible Applicant so long as the Community-Based Developer meets the experience requirements set forth in its definition above.

- (3) Notwithstanding the foregoing, Tribal Entities, Community-Based Developers and Emerging Developers may satisfy experience requirements by contracting with an entity that meets the requirements of this subdivision (b). Such contract or partnership agreement must be fully executed at the time of application submittal, and it must remain in effect until permanent loan closing and the issuance of any required tax forms.
- (4) If a Joint Venture Applicant or co-Applicant relies upon the experience of one of the Joint Venture partners or co-Applicants to meet the experience requirement of this subdivision (b), the following requirements must be met:
 - (A) The Joint Venture partner/co-Applicant with experience must document that experience in the application as required by the NOFA.
 - (B) The Joint Venture partner or co-Recipient with experience must retain a controlling interest in the Qualifying Infill Project(s) or Qualifying Infill Area for at least seven (7) consecutive years from the date of full occupancy of the Rental Housing Development. If Joint Venture partners or co-Recipients form a special purpose entity to develop and own the Qualifying Infill Project or Qualifying Infill Area, the co-Recipient with the experience must retain a controlling interest in the special purpose entity for at least seven (7) consecutive years from the date of full occupancy of the Rental Housing Development, as evidenced by the applicable organizational documents. Any transfer of such interest requires the Department's advance written approval.
 - (C) The Joint Venture partner or co-Recipient with experience must perform substantial management duties for the Qualifying Infill Project(s) or Qualifying Infill Area for at least seven (7) consecutive years from the date of full occupancy of the Rental Housing Development either directly or through its control of a special purpose entity, as evidenced by the applicable organizational documents. Such role shall include the substantial management duties set forth at UMR Section 8313.2.
 - (D) The partnership agreement or other applicable organizational documents must, for the duration of the special purpose entity, do the following:

- i. The inexperienced partner must complete training pursuant to TCAC Regulations, Title 4 CCR, Division 17, Chapter 1, Section 10325 (c)(1);
 - ii. The experienced Recipient must share the project's total developer fee equally with all other members of the Joint Venture or with all co-Recipients. For example, if there are two entities, then no less than 50 percent of the total developer fee, distributions, and net sales proceeds shall be allocated to the partner without experience. These requirements will be included as a special condition in the project's Standard Agreement and Regulatory Agreement (or Covenant where applicable); and
 - iii. Provide the partner without experience with an option to purchase the Rental Housing Development.
- (c) Small Jurisdiction Qualifying Infill Project Applicants must, in addition to all other requirements of this section, meet the following requirements:
 - (A) Applicant shall demonstrate capacity to acquire, develop, and own affordable rental housing. For purposes of this subdivision, an entity has "capacity" if it has adequate staff, capital, assets, and other resources to efficiently meet the operational needs of the Rental Housing Development; to maintain the Fiscal Integrity of the Rental Housing Development within a Qualifying Infill Project or Qualifying Infill Projects within a Qualifying Infill Area; and to satisfy all legal requirements and obligations in connection with the Rental Housing Development. Evidence of capacity must be reasonably acceptable to the Department in form and substance. Applicant shall satisfactorily demonstrate capacity at the time of its application for the funds.
 - (B) Recipient shall maintain direct and continuing control of the Rental Housing Development throughout the full term of the Department's use restriction on the Rental Housing Development. Alternatively, if the Department's funding disbursement is structured with or through a special purpose entity, the Recipients shall exercise direct and continuing control over such special purpose entity in accordance with UMR Section 8313.2 and throughout the full term of the Department's use restriction on the Rental Housing Development. Each Applicant shall certify that it will abide by this control requirement at the time of its application for the funds for the full term set forth in the Standard Agreement.

Section 202. Threshold Requirements.

Projects shall be eligible for an Award of funds if the application demonstrates that all the following threshold requirements have been met:

- (a) The application involves an eligible Capital Improvement Project pursuant to Section 200;
- (b) The Applicant is an Eligible Applicant pursuant to Section 201;
- (c) All proposed uses of Program funds are eligible pursuant to Section 203;
- (d) The application is complete pursuant to Sections 400 and 401;
- (e) Large Jurisdiction Qualifying Infill Areas must achieve a minimum point score for Scoring Criteria as set forth in the NOFA.
- (f) The Qualifying Infill Project(s), including the Qualifying Infill Projects that are included in a Qualifying Infill Area, as proposed in the application, is financially feasible as evidenced by documentation such as, but not limited to, Enforceable Funding Commitments, market study, project proforma, sources and uses statement, or other feasibility documentation that is standard industry practice for the type of proposed housing development.
- (g) The Qualifying Infill Project(s), including the Qualifying Infill Projects that are included in a Qualifying Infill Area) will maintain Fiscal Integrity consistent with proposed Rents in the Assisted Units and are feasible pursuant to the underwriting standards in UMR Section 8310;
- (h) The Qualifying Infill Project(s), Qualifying Infill Projects within Qualifying Infill Area, and Capital Improvement Project sites are free from severe adverse environmental conditions, such as the presence of toxic waste that is economically infeasible to remove or cannot be mitigated;
- (i) The Qualifying Infill Project(s) and Qualifying Infill Area sites are reasonably accessible to public transportation, shopping, medical services, recreation, schools, and employment in relation to the needs of the Qualifying Infill Project(s) or Qualifying Infill Area residents.
- (j) The Qualifying Infill Project or Qualifying Infill Area involving new construction, acquisition and substantial Rehabilitation, or conversion of nonresidential structures to residential dwelling Units must be physically capable of accommodating broadband service with at least a speed of 25 megabits per second for downloading and 3 megabits per second for uploading (25/3). Internet service and its ongoing fee are not required.
- (k) Projects that do not include Special Needs Units shall provide service

amenities sufficient to achieve a minimum score of 7 points pursuant to TCAC Regulations, as set forth in CCR Title 4 Section 10325(c)(4)(B).

- (l) The Qualifying Infill Project and Qualifying Infill Area comply with the restrictions on demolition as set forth in UMR Section 8302;
 - (m) The Qualifying Infill Project, Qualifying Infill Area, and Capital Improvement Project comply with the site control requirements as set forth at UMR Sections 8303 and 8316 with the additional requirements that the Applicant shall demonstrate site control at the time of Application and shall maintain site control throughout the term of the Award. The term of the Award shall be five years from the date of the Award of Program funds, or as set forth in the NOFA. The term of the Award may be extended in writing by the Department at its sole discretion, unless specified otherwise in the NOFA, but in no event shall the term of the Award exceed seven years from the date of the Award of Program funds established in the NOFA.
- (1) The following shall apply to Qualifying Infill Projects and Qualifying Infill Areas:
 - (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 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 some form of right to acquire or lease the project property (e.g., the entity's organizational documents, a purchase and sale agreement, and option, an assignment).
 - (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, which shall be entered into by and among the ground lessor, the ground lessee, the Department, and any other applicable parties. In all cases, the lease rider shall be recorded against the fee interest in the project property.
 - (2) The following shall apply to offsite work proposed for Capital Improvement Projects:
 - (A) Recipient/Sponsor shall have a right of way or easement, which is either perpetual, or of sufficient duration to meet Program requirements, and which allows the Recipient/Sponsor to access, improve, occupy, use, maintain, repair, and alter the property underlying the right of way or easement; and

- (B) Recipient/Sponsor shall have an executed encroachment permit for construction of improvements or facilities within the public right of way or on public land.
- (3) For Qualifying Infill Projects and Capital Improvement Projects developed in Indian Country, the following exceptions apply:
 - (A) Where site control is a ground lease, the lease agreement between the Tribal Entity and the project owner is for a period not less than 50 years; and
 - (B) An attorney's opinion regarding chain of title and current title status is acceptable in lieu of a title report.
- (n) The project complies with accessibility and fair housing obligations in Section 300.

Section 203. Eligible Use of Funds.

Funds shall be used only for approved eligible costs that are incurred on the Capital Improvement Projects as set forth in this section. In addition, the costs must be necessary and must be consistent with the lowest reasonable cost consistent with the Project's scope and area as determined by the Department.

- (a) Funds shall only be used for Capital Asset related expenses as required by Section 16727 of the GC.
- (b) Eligible costs include the construction, Rehabilitation, demolition, relocation, preservation, acquisition, or other physical improvements of the following:
 - (1) Parks or Open Space.
 - (2) Water, sewer, or other utility service improvements (including internet infrastructure), including relocation of such improvements.
 - (3) Street, road, and bridge construction and improvement.
 - (4) Structured Parking, including:
 - (A) Structured Parking spaces that are required replacement of Transit Station parking spaces (including replacement required by a transit agency), or public Structured Parking required as a condition of approval for the Qualifying Infill Project or the Qualifying Infill Area within one-half mile of a Major Transit Stop or Transit Station, not to exceed \$50,000 per space.
 - (B) Residential Structured Parking and mechanical parking lifts. The minimum residential per unit parking spaces in Structured Parking, as

required by local land-use entitlement approval, not to exceed one parking space per residential unit, and not to exceed \$50,000 per permitted 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 necessary for the development of the Capital Improvement Projects.
- (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, and public safety improvements.
- (10) Storm drains, stormwater detention basins, culverts, and similar drainage features.
- (11) Required environmental remediation necessary for the development of the Capital Improvement Project, Qualifying Infill Project or Qualifying Infill Area.
- (12) Site acquisition or control for the Capital Improvement Project including, but not limited to, easements and rights of way. Such costs must be deemed reasonable and demonstrated by documentation that may include appraisals, purchase contracts, or any other documentation as determined by the Department.
- (13) Soft costs such as those incidentally but directly related to construction or other pre-development components including, but not limited to, planning, engineering, construction management, architectural, and other design work, required mitigation expenses such as mitigation design or testing, appraisals, legal expenses, and necessary easements. Soft costs shall not exceed 10 percent of costs associated with the funding request for the Capital Improvement Projects.
- (14) Other Capital Asset costs approved by the Department and required as a condition of local approval for the Capital Improvement Projects.
- (15) Impact fees required by local ordinance are eligible for Program funding only if used for the identified Capital Improvement Projects. Funded impact fees may not exceed 5 percent of the Program Award.

- (c) The following costs are not eligible:
 - (1) Development fees or profit.
 - (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.

Section 204. Cost Limitations.

- (a) Capital Improvement Project costs must be reasonable and necessary.
 - (1) Costs must be reasonable compared to similar infrastructure projects of modest design in the general area of the Capital Improvement Projects.
 - (2) The Eligible Applicant must demonstrate no other source of compatible funding is reasonably available as evidenced in the Capital Improvement Projects development budget.

Section 205. Grant Terms and Limit.

- (a) The total maximum grant amount shall be established by the number of Units in the Qualifying Infill Project or the Qualifying Infill Area, the bedroom count of these Units, and the density and affordability of the housing to be developed. Replacement housing Units may be included in the calculation of the total maximum grant amount. The Department shall publish a table listing per Unit grant limits for each NOFA based on these factors. The total eligible grant amount shall be based upon the lesser of the amount necessary to fund the Capital Improvement Projects or the maximum amount calculated from the table published by the Department.
- (b) Minimum and maximum Award amounts for a Qualifying Infill Project and Qualifying Infill Area are identified in the NOFA.
- (c) Grant terms will be outlined in the Standard Agreement.
- (d) In consideration for the IIG Award to the Recipient, there shall be a Covenant recorded against the fee interest of the real property site(s) of the Qualifying Infill Project or Qualifying Infill Area, which shall impose development, use, and affordability restrictions upon the real property. The Covenant shall be binding, effective and enforceable commencing upon its execution and shall continue in full force and effect for a period of not less than 55 years for Rental Affordable

Housing Developments (or 30 years for Homeownership Housing Developments) after a certificate of occupancy or its equivalent has been issued for the Affordable Housing Development by the local jurisdiction or, if no such certificate is issued, from the date of initial occupancy of the Affordable Housing Development.

- (e) Where the Qualifying Infill Project or Qualifying Infill Area is receiving low-income housing tax credits, the Recipient may provide Program funds to the Sponsor of the Qualifying Infill Project or Qualifying Infill Area in the form of a zero percent deferred payment loan, with a term of at least 55 years. The loan may be secured by a deed of trust, which may be recorded with the local county recorder's office, provided the beneficiary of the loan shall not under any circumstances exercise any remedy, including, without limitation, foreclosure, under the deed of trust without the prior written consent of the Department, in its sole and absolute discretion. The loan may not be sold, assigned, assumed, conveyed, or transferred to any third party without prior written Department approval, which is at the Department's sole and absolute discretion. For Qualifying Infill Projects or Qualifying Infill Areas assisted by other Department funding programs, repayment of the loan between the Recipient/Sponsor shall be limited to (1) no repayments to the Recipient until the maturity date or (2) repayment only from distributions from the Qualifying Infill Project or Qualifying Infill Area within the meaning of 25 CCR Section 8301(h). The Recipient shall be responsible for all aspects of establishing and servicing the loan. The provisions governing the loan shall be entirely consistent with these Guidelines and all documents required by the Department with respect to the use and disbursement of Program funds. All documents governing the loan between the Recipient/Sponsor shall contain all the terms and conditions set forth in this subdivision and shall be subject to the review and approval of the Department prior to making the loan. This subdivision shall apply to any Qualifying Infill Project or Qualifying Infill Area receiving low-income housing tax credits regardless of the date of the Program Award.
- (f) Conditions precedent to the initial disbursement of Program funds shall include receipt of all required public agency entitlements and all required funding commitments for any proposed Qualifying Infill Project or Qualifying Infill Area supported by the Capital Improvement Project.
- (g) Grant funds will be disbursed as progress payments for approved eligible costs incurred subject to the requirements of these Guidelines.
- (h) Where approval by a local public works department, or an entity with equivalent jurisdiction, is required for the Capital Improvement Project, the Recipient must submit, prior to the disbursement of grant funds, a statement or other documentation acceptable to the Department, indicating that the Capital Improvement Project is consistent with all applicable policies and plans enforced or implemented by that department or entity.

- (i) The Department shall record an affordability Covenant against the fee estate. The affordability Covenant shall be subject only to those liens, encumbrances and other matters of record approved by the Department pursuant to UMR sections 8310(f) and 8315. This recorded affordability Covenant shall be in place prior to initial disbursement of funds.
- (j) Grant Awards that are not encumbered within two years of the fiscal year in which an Award was made will revert to the Department, as required by HSC Section 53559, subdivision (g).
- (k) Grants awarded, but for which development of the related housing Units has not progressed in a reasonable period of time from the date of the grant Award, shall be recaptured, as required by HSC Section 53559, subdivision (g).

Article 3. General Requirements.

Section 300. State and Federal Laws, Rules, Guidelines and Regulations.

The Recipient/Sponsor agrees to comply with all applicable state and federal laws, rules, guidelines and regulations that pertain to construction, health and safety, labor, fair employment practices, equal opportunity applicable to the project, and all other matters applicable to the Capital Improvement Projects, Qualifying Infill Project, or Qualifying Infill Area, the Recipient/Sponsor, its contractors or subcontractors, and any grant activity, including without limitation the following:

(a) Nondiscrimination and Fair Housing Requirements

Recipients/Sponsors shall adopt a written non-discrimination policy requiring that no person shall, on the grounds of race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, Disability, age, medical condition, genetic information, citizenship, primary language, immigration status (except where explicitly prohibited by federal law), arbitrary characteristics, and all other classes of individuals protected from discrimination under federal or state fair housing laws, individuals perceived to be a member of any of the preceding classes, or any individual or person associated with any of the preceding classes be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole or in part with Program funds. Recipients/Sponsors shall adopt written policies for providing reasonable accommodations, reasonable modifications, and auxiliary aids and services for effective communications with residents and applicants with disabilities.

Recipients/Sponsors shall comply with all applicable state and federal law, including, without limitation, the requirements of Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq.); the Americans with Disabilities Act of 1990; the Fair Housing Act; the Fair Housing Amendments Act of 1988; the California Fair Employment and Housing Act; the Unruh Civil Rights Act; Government Code Section 11135; Section 504 of the Rehabilitation Act of 1973; and all regulations

promulgated pursuant to those statutes (including 24 C.F.R. § 100, 24 C.F.R. § 8, and 28 C.F.R. § 35).

(b) Americans with Disabilities Act and Physical Accessibility Requirements

The Recipient/Sponsor shall ensure compliance with all applicable state and federal building codes and accessibility laws and standards. All developments shall adhere to the accessibility requirements set forth in: (i) California Building Code Chapters 11A and 11B; (ii) the federal Fair Housing Act (42 U.S.C. § 3601 et seq.) and its regulations at 24 Code of Federal Regulations part 100 (particularly 24 C.F.R. § 100.205), and its design and construction requirements, including: ANSI A117.1-1986, and the Fair Housing Accessibility Guidelines, March 6, 1991, in conjunction with the Supplement to Notice of Fair Housing Accessibility Guidelines: Questions and Answers About the Guidelines, June 28, 1994; and (iii) the Americans with Disabilities Act of 1990 (42 U.S.C. §12101 et seq.) and its Title II and Title III regulations at 28 Code of Federal Regulations parts 35 and 36; and Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794) and the implementing HUD regulations at 24 Code of Federal Regulations Part 8. In addition, developments shall adhere to either the Uniform Federal Accessibility Standards (UFAS) (24 C.F.R. § 8.32), or HUD's Alternative Accessibility Standard. In addition, the Recipient/Sponsor shall ensure that the project meets the following requirements:

- (1) New construction projects: All new construction projects must provide a minimum of fifteen percent (15%) of the Restricted Units with mobility features, and a minimum of ten percent (10%) of the Restricted Units with hearing and vision features.
- (2) Rehabilitation project: All Rehabilitation projects must provide a minimum of ten percent (10%) of the Restricted Units with mobility features, and a minimum of four percent (4%) of the Restricted Units with hearing and vision features. At least one of each common area facility type and amenity, as well as paths of travel between Accessible Housing Units and such facilities and amenities, the building entry and public right of way, and the leasing office or area shall also be made accessible utilizing CBC Chapter 11(B) as a design standard. In all other respects, applicable building code will apply. The Director may approve a partial or full exemption to the requirements for the number of Accessible Housing Units in excess of those required by the ADA, Section 504, or California Building Code (CBC) Chapter 11B provided:
 - (A) The exemption does not pertain to any accessibility features required by applicable building codes, the CBC Chapter 11B, or federal law, including the required minimum 5 percent Units with mobility features and 2 percent Units with hearing and vision features. These CBC Chapter 11B and federal law minimums are calculated on all Units in the project, not just Restricted Units, and

- (B) The Recipient/Sponsor and project's architect demonstrate that full compliance with requirements that exceed those otherwise required by building codes or state or federal law would be infeasible or create an undue financial and administrative burden. Accessibility must be provided to the maximum extent feasible.
- (3) Senior projects: Senior new construction projects must provide a minimum of fifty percent (50%) of all Restricted Units with mobility features. Senior Rehabilitation projects must provide a minimum of twenty-five percent (25%) of all Restricted Units. The Department's Director may approve a waiver for a Senior Rehabilitation project pursuant to the provisions stated in the previous paragraph.
- (4) All projects with elevators must comply with CBC Chapter 11(B) accessibility requirements for elevators.
- (5) All project owners with adaptable dwelling Units must provide adequate and visible notice to tenants of their ability to request conversion of adaptable features in their Units to more accessible versions.
- (6) Percentage requirements shall be calculated based on the number of Restricted Units (as defined in UMR) in the building and rounded up to the nearest whole number. However, CBC Chapter 11B and federal laws requiring a minimum 5 percent Units with mobility features and 2 percent Units with hearing and vision features are calculated on all Units in the project, not just Restricted Units. The required number of Units shall be the higher of these two calculations.
- (7) Accessible Housing Units shall, to the maximum extent feasible and subject to reasonable health and safety requirements, be distributed throughout the project and be available in a sufficient range of sizes and amenities so that an individual with disabilities' choice of living arrangements is, as a whole, comparable to that of other persons eligible for housing assistance under the same project consistent with 24 C.F.R. Section 8.26.
- (8) Compliance and Verification: Prior to loan closing but after construction completion, the Recipient/Sponsor shall provide a certification of compliance, signed by the entity which owns the Qualifying Infill Project or Qualifying Infill Area and the project architect as well as third party documentation confirming compliance (by a Certified Access Specialist (CAS) with demonstrated experience meeting federal accessibility standards, or by an architect with demonstrated experience meeting federal accessibility standards.
- (9) Accessible Housing Units: All new and existing projects with fully Accessible Housing Units shall adopt suitable means to assure that information regarding the availability of Accessible Housing Units reaches eligible individuals with disabilities and shall take reasonable nondiscriminatory steps to maximize the

utilization of such Units by eligible individuals whose Disability requires the accessibility features of the particular Unit. Such information shall be included in marketing plans. To this end, when an Accessible Housing Unit becomes vacant, before offering such Unit to an applicant who does not need the features of the Unit, the project shall offer such Unit:

- (A) First, to a current occupant of another Unit of the same project having a Disability requiring the accessibility features of the vacant Unit and occupying a Unit not having such features, or if no such occupant exists, then
- (B) Second, to an eligible qualified applicant on the waiting list having a Disability requiring the accessibility features of the vacant Unit.
- (C) If no applicant meeting the criteria in subsections (A) or (B) is available, the Accessible Housing Unit may be offered to a tenant or applicant who does not need the Unit's accessibility features.
- (D) When offering an Accessible Housing Unit to an applicant not having a Disability requiring the accessibility features of the Unit, the owner or manager shall require the applicant to agree to move to a non-accessible Unit when a comparable Unit is available. This agreement shall be incorporated in the lease or a lease addendum.

(c) **Violence Against Women Act**

Where applicable, **Recipients/Sponsors** shall ensure individuals are not denied assistance, evicted, or have their assistance terminated because of their status as survivors of domestic violence, dating violence, sexual assault, or stalking, or for being affiliated with a victim, pursuant to 34 USC Section 12491.

Recipients/Sponsors and owners have an obligation to inform such prospective and existing tenants of the rights and protections available to them under federal law by providing them with a Notice of Occupancy Rights Form HUD-5380 and VAWA Self-Certification Form HUD-5382. Notice must be given at the time an applicant is denied housing, at the time an applicant is admitted to housing, or when a tenant is notified of eviction or termination. **Recipients/Sponsors** and owners are also required to comply with additional protections afforded to survivors under state law pursuant to CIV Section 1946.7 (early lease termination without penalty) and CIV Sections 1941.5 and 1941.6.

(d) **Pet Friendly Housing Act**

Recipient/Sponsor shall authorize residents of the housing development to own or otherwise maintain one or more common household pets pursuant to the Pet Friendly Housing Act of 2017 (HSC Section 50466).

(e) **California State Prevailing Wage Law**

For the purposes of California's prevailing wage law (Lab. Code, Section 1720 et seq.), an IIG Capital Improvement Project shall be considered a public work that is paid for in whole or in part out of public funds. As such, it is subject to California's prevailing wage law. Program funding of a Capital Improvement Project shall not necessarily, in and of itself, be considered public funding of a Qualifying Infill Project or Qualifying Infill Area unless such funding is considered public funding under California's prevailing wage law.

Although the use of Program funds does not require compliance with the federal Davis-Bacon Act, other funding sources may require compliance with the federal Davis-Bacon Act.

Section 301. Relocation Requirements.

- (a) The Recipient/Sponsor who develops a Qualifying Infill Project, Qualifying Infill Area, or Capital Improvement Project resulting in displacement of persons, businesses or farm operations shall be solely responsible for providing the assistance and benefits set forth in this section and in applicable state and federal law, and shall agree to indemnify and hold harmless the Department from any liabilities or claims for relocation-related costs.
- (b) All persons, businesses or farm operations that are displaced as a direct result of the development of a Qualifying Infill Project, Qualifying Infill Area, or Capital Improvement Project shall be entitled to relocation benefits and assistance as provided in Title 1, GC, Division 7, Chapter 16, commencing at Section 7260, and Title 25 CCR, Subchapter 1, Chapter 6, commencing at Section 6000. Additionally, to the extent applicable, local relocation law as well as the Federal Uniform Relocation Assistance and Real Property Acquisition Act, 49 C.F.R. Part 24, including Appendix A to Part 24, shall apply. To the extent of any variation in the applicable relocation laws, the stricter standard shall apply. Displaced tenants who are not replaced with Eligible Households under this Program shall be provided relocation benefits and assistance from funds other than Program funds.
- (c) The Recipient/Sponsor shall prepare or update a relocation plan in conformance with the provisions of Title 25 CCR, Section 6038, and any other application relocation laws. The relocation plan shall be subject to the review and approval by the Department prior to the disbursement of Program funds and prior to actual displacement of persons, businesses or farm operations.
- (d) All Eligible Households who are temporarily displaced as a direct result of the development of the Qualifying Infill Project, Qualifying Infill Area, or Capital Improvement Project shall be entitled, upon initial occupancy of the Rental Housing Development, to occupy Assisted Units meeting the tenant occupancy standards set forth in UMR Section 8305.
- (e) All ineligible households who are temporarily displaced as a direct result of the

development of the Qualifying Infill Project, Qualifying Infill Area, or Capital Improvement Project shall be entitled, upon initial occupancy of the Rental Housing Development, to occupy any available non-Assisted Units for which they qualify.

- (f) Notwithstanding the preceding subparagraphs, tenants who are notified in writing prior to their occupancy of an existing Unit that the Unit may be demolished as a result of funding provided under the Program shall not be eligible for relocation benefits and assistance under this section. The form of any notices used for this purpose shall be subject to Department approval.

Article 4. Application Requirements

Section 400. Application Process.

- (a) The Department shall periodically issue a NOFA that specifies, among other things, the amount of funds available, summary application requirements, the criteria of rating points, minimum eligibility threshold point scores, 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. A NOFA may declare as ineligible those Project applications for which the Department has issued, or concurrently will issue, a special NOFA pursuant to subsection (c)(4), below. Applications selected for funding shall be approved at grant amounts, terms, and conditions specified by the Department. For each Project selected for funding, the Department shall issue an Award letter and Standard Agreement.
- (b) Substituting previously awarded Department funds is prohibited, except as provided below.
 - (1) Applicants seeking to substitute previously awarded funds must request withdrawal of their prior Award in writing and provide reasonable justification that the substitution is necessary to ensure project feasibility. Substitutions based solely upon Applicants' preference or convenience will not be permitted. Department approval of the withdrawal is required prior to the application due date without assurance of receiving a new Award. This prohibition applies to funds awarded under any Department program, including a prior IIG Award.
- (c) In order to implement goals and purposes of the Program, the Department may adopt measures to direct funding Awards to designated project types including, but not limited to, Rural Area projects, projects located in areas needing additional funding to achieve a reasonable geographic distribution of Program funds, projects preserving continued affordability, and projects with specified funding characteristics. These measures may include, but are not limited to:
 - (1) Issuing a special NOFA for designated project types.

- (2) Awarding bonus points within a particular NOFA to designated project types.
- (3) Reserving a portion of funds in the NOFA for designated project types.
- (4) Notwithstanding anything in these Guidelines to the contrary, a special NOFA issued pursuant to this subsection may establish an Over-the-Counter application process for Small Jurisdiction projects, meaning the Department continuously accepts and rates applications according to minimum threshold criteria published in a NOFA for the process, and makes Awards to applications that meet or exceed these criteria until the funding available for the process is exhausted. At a minimum, a special NOFA shall include a description of the application process and funding conditions, shall require compliance with Section 202, and shall establish minimum funding threshold criteria based on the rating criteria set forth in Section 402; and
- (d) Applications selected for funding shall be approved subject to conditions specified by the Department in accordance with the NOFA and applicable law.
- (e) The Department may adjust these procedures as follows:
 - (1) In a funding round where the total funding requested in the applications exceeds the total funding available in the NOFA, it may elect not to evaluate compliance with some or all eligibility requirements for applications that do not rank high enough to be awarded, as indicated by a preliminary point scoring.
- (f) Applications will be reviewed, and negative points assessed, consistent with the Department's Negative Points Policy. The Negative Points Policy, Administrative Notice Number 2022-01 dated March 30, 2022, and as published on the Department's website at <https://www.hcd.ca.gov/grants-and-funding>, is hereby incorporated by this reference to these Guidelines as if set forth in full herein, and shall apply with equal force as all other provisions set forth herein.

Section 401. Application Content and Application Eligibility Requirements

- (a) Application shall be made on a form(s) made available by the Department, without modification, requesting the information deemed necessary by the Department to evaluate compliance with these Guidelines and all applicable statutes, regulations, and similar rules. Without limiting the generality of the foregoing, the application may require the Applicant(s) to specify all sources and amounts of funding for which they are applying.
- (b) An application shall be deemed complete when:
 - (1) The application meets all threshold requirements, as set forth in Section 202

of the NOFA and the Department's application form.

- (A) During the application review the Department staff may request clarifying information, provided it does not affect the competitive scoring.
- (c) Authorizing resolutions of the governing boards of both the Recipient/Sponsor and a co-Recipient/Sponsor (except where the Recipients(s)/Sponsor(s) are individuals) shall be provided, and must be approved by the Department, prior to issuance of a Standard Agreement.
- (d) Qualifying Infill Area applications from Large Jurisdictions shall be evaluated for compliance with the threshold and eligibility requirements of these Guidelines, and applicable statutes, and scored based on the application scoring criteria listed in Section 402 of these Guidelines. The applications with the highest number of points shall be selected for funding, provided that they meet all threshold and eligibility requirements and achieve specified minimum scores as identified in the NOFA.
- (e) For Applicants applying as Community-Based Developers, the entity must demonstrate in their application that they have community knowledge, commitment to long-term community investment, and population-specific cultural competency, all through a combination of the following: receipt of grant or loan funds for services within the relevant neighborhood or community, cultural and linguistic competency on staff, a record of hiring from the community, and membership in or recruitment from a local Urban League (or substantially equivalent) organization. The sufficiency of the foregoing demonstration shall be evaluated in the reasonable discretion of the Department. The entity shall be allowed to define their served community within reason, for example by specifying a neighborhood geography of a specific number of square miles within the location of their central office, which area should include the proposed project (Note: For Applicants/Sponsors from Large Jurisdictions, maximum experience points can be obtained with fewer projects than other Applicants/Sponsors).

Applicants applying as Community-Based Developers must meet the following two eligibility criteria:

- (1) Maintain their corporate headquarters within 10 miles of the proposed project or have three deed-restricted Affordable Housing Developments within 10 miles of the proposed project; and
 - (2) Directly provide at least two (2) community benefit programs accessible to the general public within 10 miles of the proposed project.
- (f) Small Jurisdiction Over-the-Counter process: Qualifying Infill Projects and Qualifying Infill Areas
 - (1) The NOFA for Small Jurisdictions will specify the amount of funds available, application requirements, the date the Department will begin accepting

applications, a list of counties eligible to apply under this NOFA, and the general terms and conditions of funding commitments.

- (2) The Department shall accept applications for Projects in Small Jurisdictions on an Over-the-Counter basis and evaluate them for compliance with the eligibility requirements listed in Section 200 and threshold requirements listed in Section 202. Small Jurisdiction applications that meet all threshold and eligible Project requirements shall be selected for funding as specified in these Guidelines and the NOFA for Small Jurisdictions to the extent funds are available.

Section 402. Application Scoring and Selection Criteria for Qualifying Infill Areas in Large Jurisdictions.

Applications for Qualifying Infill Areas in Large Jurisdictions shall be rated using the Scoring Criteria outlined in the NOFA. Eligible Applicants may elect to exclude from consideration discrete phases or portions of the developments within the Qualifying Infill Area, provided these portions or phases are not included for other purposes under these Guidelines, including rating pursuant to this Section, and determining the maximum grant amount calculated pursuant to Section 205.

Section 403. Performance Deadlines.

- (a) Program grant funds used for the completion of the Capital Improvement Project must be disbursed in accordance with the deadlines specified in the NOFA and Standard Agreement. The Recipient must provide final disbursement requests by the disbursement deadline specified in the NOFA and Standard Agreement.
- (b) Additionally, the Qualifying Infill Project or Qualifying Infill Area used as the basis for calculating the Capital Improvement Project grant amount in the application must meet the following:
 - (1) All permanent financing commitments shall be secured within 24 months of any Award of Program funds. With respect to a Qualifying Infill Area, the foregoing requirement is applicable to all Qualifying Infill Projects within that Qualifying Infill Area.
 - (A) If funding commitments are not secured in accordance with subsection (1) above and pursuant to the Department's Disencumbrance Policy, the Recipient will be required to repay disbursed Program grant funds. The proportion of the amount to be repaid (A) to the total grant amount (B) shall be the same as the number of residential Units where construction has not timely commenced (C) to the total number of designated residential units (D) (Formula: $A=C/D * B$).
 - (2) The Qualifying Infill Project or Qualifying Infill Area must complete construction of the housing units which were used as the basis for

calculating the Program Award within three years of securing all permanent financing. Completion of construction must be evidenced by a certificate of occupancy or equivalent documentation and submitted to the Department.

- (c) In addition to (a) and (b) above, all Recipients will be subject to the Department's Disencumbrance Policy. The Disencumbrance Policy, Administrative Notice Number 2022-02 dated March 30, 2022, and as published on the Department's website at <https://www.hcd.ca.gov/grants-and-funding>, is hereby incorporated by this reference to these Guidelines as if set forth in full herein, and shall apply with equal force as all other provisions set forth herein. Failure to deliver the project as approved by the Department within applicable timeframes is also a basis for negative points assessment under the Negative Points Policy Section 102(e).
- (d) Upon written request and demonstration of good cause by the Recipient, the Department, in its sole discretion, may by written communication with Recipient extend the time for compliance with any of the deadlines set forth in these Guidelines, where such extension does not conflict with statutes, regulations, Department Administrative Notices, or liquidation dates which may apply to the award of Program funds. The Department's discretion to extend dates for compliance shall be retroactive and apply to all awards made pursuant to these Guidelines.

Article 5. Operations

Section 500. Legal Documents.

- (a) Standard Agreement.

Upon the Award of Program funds to a Project, the Department shall enter into a Standard Agreement with the Recipient/Sponsor, which shall commit funds from the Program, subject to specified conditions, in an amount sufficient to encumber the approved Program grant amount. The Standard Agreement shall require the Recipient/Sponsor to comply with the requirements and provisions of these Guidelines, and generally applicable state contracting rules and requirements, and all other applicable laws. A Standard Agreement shall be executed within two years. The agreement shall contain the following:

- (1) A description of the approved Capital Improvement Project and the approved Qualifying Infill Project or Qualifying Infill Area, or both, and the permitted uses of Program funds;
- (2) The amount and terms of the Program grant;
- (3) Provisions governing the construction work and, as applicable, the acquisition and preparation of the site of the Capital Improvement Project;

- (4) The Recipient's responsibilities for the development of the approved Capital Improvement Project, including, but not limited to, construction management, maintaining files, accounts, and other records, and reporting requirements;
 - (5) Provisions relating to the development, construction, affordability and occupancy of the Qualifying Infill Project or Qualifying Infill Area supported by the Capital Improvement Projects;
 - (6) Provisions related to administering the Program in a manner to Affirmatively Further Fair Housing and taking no action that is materially inconsistent with Affirmatively Furthering Fair Housing pursuant to GC Section 8899.50.
 - (7) Provisions relating to the placement of a sign on, or in the vicinity of, the project site, indicating that the Department has provided financing for the Capital Improvement Project, or provisions relating to the Department's arrangement, in its sole and absolute discretion, for publicity of the Program Award. The Department may also arrange for publicity of the Department grant in its sole discretion;
 - (8) Remedies available to the Department in the event of a violation, breach or default of the Standard Agreement;
 - (9) Requirements that the Recipient permit the Department or its designated agents and employees the right to inspect the Project and all books, records and documents maintained by the Recipient in connection with the Program grant;
 - (10) Special conditions imposed as part of Department approval of the Project;
 - (11) Other terms and conditions required by federal or state law;
 - (12) Provisions regarding the required execution and the recordation of an affordability Covenant against the fee estate of the Qualifying Infill Project or Qualifying Infill Projects within the Qualifying Infill Area in accordance with UMR Sections 8310(f) and 8315. Such Covenant shall be in the form and substance satisfactory to the Department, and it shall run for a term of at least 55 years; and
 - (13) Other provisions necessary to ensure compliance with the requirements of the Program and applicable state and federal laws.
- (b) Disbursement Agreement.

Upon the Award of Program funds to a Project, the Department shall also enter into a Disbursement Agreement with the Recipient/Sponsor, which shall govern

disbursement of funds from the Program to ensure timely completion of the Project, Qualifying Infill Project or a Qualifying Infill Area, subject to specified conditions, in an amount sufficient to encumber the approved Program grant amount. The Disbursement Agreement shall require the Recipient/Sponsor to comply with the requirements and provisions of these Guidelines, and generally applicable state contracting rules and requirements, and all other applicable laws. The Disbursement Agreement shall be executed within two years and prior to commencement of any construction except as may be allowed under Section 200(b)(10). The agreement shall contain provisions relating to the use of funds, disbursement schedule, contractors and subcontractors, construction responsibilities, general conditions of disbursement, conditions precedent to individual disbursement, etc.

(c) Covenant.

Upon the Award of Program funds to a Project, the Department shall also enter into a Covenant with the real property Owner (“Owner” shall include all successors, assigns and transferees of any or all of the Owner’s interest in the Affordable Housing Development and the property), which shall ensure the construction and continued operation of the Affordable Housing Development in consideration for the Program Grant. The Covenant shall require the Recipient/Sponsor to comply with the requirements and provisions of these Guidelines, and generally applicable state contracting rules and requirements, and all other applicable laws. Covenant shall be entered into before any disbursement of funds and before commencement of construction. The Covenant shall contain provisions relating to the repair and maintenance of the property or improvements of the Affordable Housing Development, affordability restrictions on same, and encumbrances, liens and charges, etc. For Qualifying Infill Projects, Covenants will be recorded on the fee estate of the project site; For Qualifying Infill Areas, Covenants will be recorded on the fee estate of the real property identified in the application as the land on which the Affordable Units shall be developed.

Section 501. Defaults and Cancellations.

(a) In the event of a breach or violation by the Recipient of any of the provisions of the Standard Agreement, the Department may give written notice to the Eligible Applicant to cure the breach or violation within a period of not less than 15 days. If the breach or violation is not cured to the satisfaction of the Department within the specified time, the Department, at its option, may declare a default under the Standard Agreement and may seek legal remedies for the default including the following:

- (1) The Department may seek, in a court of competent jurisdiction, an order for specific performance of the defaulted obligation or the appointment of a receiver to complete the Project in accordance with Program requirements.
- (2) The Department may seek such other remedies as may be available under the relevant agreement or any law.

- (3) In the event the Project or Qualifying Infill Project is or has been awarded additional Department funding, any and all such funding will be cross-defaulted to and among one another in the respective loan or, where applicable, grant documents. A default under one source of Departmental funding shall be a default under any and all other sources of Department funding in the Project.
- (b) Funding commitments and Standard Agreements may be canceled by the Department under any of the following conditions:
 - (1) The objectives and requirements of the Program cannot be met by continuing the commitment or Standard Agreement;
 - (2) Construction of the Capital Improvement Project cannot proceed in a timely fashion in accordance with the timeframes established in the Standard Agreement; or
 - (3) Funding conditions have not been or cannot be fulfilled within required time periods; or
 - (4) There has been a material change, not approved by the Department, in the Capital Improvement Projects or the Principals or management of the Recipient/Sponsor or Project.

Upon Recipient/Sponsor demonstration of good cause to comply with any or all of the conditions of this subsection, the Department may extend the date for compliance and shall provide notice of the extension in writing.

- (c) Upon receipt of a notice of intent to cancel the grant from the Department, the Recipient shall have the right to appeal to the Director of the Department.

Section 502. Reporting Requirements.

- (a) During the full term of the Standard Agreement and Covenant and according to the deadlines identified in the Standard Agreement and the Covenant, the Recipient shall submit, upon request of the Department, an annual performance report regarding the construction of the Capital Improvement Project; and upon receipt of the certificate of occupancy, an annual monitoring report, on a form provided by the Department, regarding the affordability and occupancy of the housing project designated in the application.
- (b) At any time during the term of the Standard Agreement and/or Covenant, the Department may perform or cause to be performed a financial audit of any and all phases of the Qualifying Infill Project or Qualifying Infill Area and Capital Improvement Project. At the Department's request, the Recipient shall provide, at its own expense, a financial audit prepared by a certified public accountant.

- (c) The Recipient and owner of the parcel of land that is being developed agree to regular monitoring of the housing development by the Department or such designee the Department may name at any time during the term of the Standard Agreement and/or Covenant, to verify compliance with the requirements of the Program. The Recipient and owner, or designee, shall submit annual reports as required by the Department on forms approved or provided by the Department, detailing components of the on-going operations of the housing development, as noted in this subsection. The components of annual operations for which reporting is required, which the Department retains the right to inspect, or cause to be inspected, include, and are not limited to:
- (1) The Qualifying Infill Project or Qualifying Infill Projects in the Qualifying Infill Area, including interior of Affordable Units, common areas, and exterior of the development;
 - (2) Tenant files, demonstrating compliance with Program affordability and occupancy standards;
 - (3) Financial records, including the right to request a certified financial audit of the revenue, expenses, and operations of the housing development; and
 - (4) Insurance records to ensure continuous insurance coverage in accordance with Department and Program requirements.

The Department retains the authority to compel the Recipient and owner to comply with Program requirements as detailed in the IIG restrictive Covenant recorded against the property.