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To: CEDA Committee
From: Council President De La Fuente
Date: March 11, 2008

Summary

On February 26, 2008, the Community and Economic Development Committee received An Agency Resolution Authorizing The Submittal Of Applications To The California Department Of Housing And Community Development For Funding Under The Infill Housing Program For The MacArthur Transit Village Project, The Uptown Project, The West Oakland Transit Village Project, And The Hill-Elmhurst Plaza Project And Authorizing Acceptance And Appropriation Of Grant Funds From This Program And The Execution Of Standard Agreements And Any Related Documents Necessary, If Selected For Funding.

At the committee, staff agreed to come back to Council once the guidelines for the Infill Housing Program had been completed and to seek authorization for an application for the Fruitvale Transit Village Project, if it is eligible.

Attached are the guidelines for the Infill Housing Program, released on February 28, 2008. Application deadline is April 4, 2008.

Due to the short turn around time for this report and the newly released guidelines, staff will review the released guidelines and provide their recommendations for the application of the Fruitvale Transit Village in the supplement agenda packet of March 7th.

INFILL INFRASTRUCTURE GRANT PROGRAM

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ARTICLE 1. General

Section 300. Purpose and Scope

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

Section 301. Program Description- An Overview

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

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

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

Section 302. Definitions

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

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

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

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

facilitates the development of, a Qualifying Infill Project or Qualifying Infill Area.

- (h) "CCR" means the California Code of Regulations.
- (i) "Department" means the Department of Housing and Community Development of the State of California.
- (j) "Locality" means a California city, county or city and county.
- (k) "Lower Income" has the meaning set forth in Health and Safety Code Section 50079.5.
- (l) "Major Transit Stop" means a bus, ferry or rail stop served by either:
 - (1) one route departing nine (six for Localities with minimum Net Densities of 15 units per acre or less pursuant to Paragraph 303(a)(4)) or more times between both 7:00 a.m. to 10:00 a.m., inclusive, and 3:00 p.m. to 7:00 p.m., inclusive, Monday through Friday; or
 - (2) two or more routes departing 12 (eight for Localities with minimum Net Densities of 15 units per acre or less pursuant to Paragraph 303(a)(4)) or more times between both 7:00 a.m. to 10:00 a.m., inclusive, and 3:00 p.m. to 7:00 p.m., inclusive, Monday through Friday.
- (m) "Moderate Income" has the meaning set forth in Health and Safety Code Section 50093.
- (n) "MHP" shall mean the Multifamily Housing Program authorized and governed by Sections 50675 through 50675.14 of the Health and Safety Code and the regulations promulgated there under in 25 CCR 7300, *et seq.*
- (o) "Net Density" means the total number of dwelling units per acre of land to be developed for residential or mixed use, excluding permanent streets, required drainage facilities, sidewalks, parks, and open space. Except for the determination of project eligibility pursuant to Section 303, the number of dwelling units in mixed use Qualifying Infill Projects shall be adjusted to include the number of units that could have been developed in the non-residential space of the development at the same densities as the residential space. This number shall not exceed 25 percent of the actual number of residential units in the development.
- (p) "NOFA" means a Notice of Funding Availability for the Program issued by

the Department.

- (q) "Program" means the Infill Infrastructure Grant Program as implemented by these Guidelines.
- (r) "Qualifying Infill Area" means an area designated in the Program application that meets the criteria for a Qualifying Infill Area set forth in Section 303.
- (s) "Qualifying Infill Project" means a residential or mixed-use residential development project designated in the Program application that meets the criteria for a Qualifying Infill Project set forth in Section 303.
- (t) "Recipient" means the public agency, private developer or BID receiving a commitment of Program funds for an approved project.
- (u) "Rural Area" has the meaning set forth in Health and Safety Code 50199.21. To determine whether a project is located in a Rural Area, please refer to the document entitled Infill Infrastructure Grant (IIG) Program, Rural Area Determination Procedures.
- (v) "TCAC" means the California Tax Credit Allocation Committee.
- (w) "Transit Station" means a rail or light-rail station, ferry terminal, Bus Hub, or Bus Transfer Station. Included in this definition are planned transit stations otherwise meeting this definition whose construction is programmed into a Regional or State Transportation Improvement Program to be completed no more than five years from the deadline for submittal of applications set forth in the NOFA.
- (x) "Urbanized Area" means an incorporated city, or an urbanized area or urban cluster as defined by the United States Census Bureau, or an unincorporated area within an urban service area that is designated in the local general plan for urban development and is served by public sewer and water.
- (y) "Urban Uses" mean any residential, commercial, industrial, public institutional, transit or transportation passenger facility, or retail use, or any combination of those uses.
- (z) "Very-low Income" has the meaning set forth in Health and Safety Code Section 50105.

ARTICLE 2. Program Requirements

Section 303. Eligible Projects

- (a) To be eligible for funding, a Capital Improvement Project must be an integral part of, or necessary to facilitate the development of either a Qualifying Infill Project or a Qualifying Infill Area. The Qualifying Infill Project or Area must:
- (1) Be located in an Urbanized Area.
 - (2) Be located in a Locality which has an adopted housing element that has been found by the Department to be in substantial compliance with the requirements of Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code, pursuant to Section 65585 of the Government Code. Compliance must be established as of the deadline for submittal of applications set forth in the NOFA.
 - (3) Include not less than 15 percent of the total residential units to be developed in the Qualifying Infill Project or Qualifying Infill Area as Affordable Units.
 - (A) For developments that contain both rental and ownership units, units of either or both product types may be included in the calculation of the percentage of Affordable Units.
 - (B) A disposition and development agreement or other project- or area-specific agreement between the developer and the local agency having jurisdiction over the Project executed on or before August 24, 2007 shall be deemed to meet the affordability requirement of this paragraph if the agreement includes affordability covenants that subject the Qualifying Infill Project or Area to the production of affordable units for very low, low-, or moderate-income households.
 - (C) Replacement housing units required to be provided by a community redevelopment agency pursuant to redevelopment law shall not be counted toward meeting the requirements of this paragraph.
 - (4) Include average residential Net Densities on the parcels to be developed that are equal to or greater than the densities described in subparagraph (B) of paragraph (3) of subdivision (c) of Section 65583.2 of the Government Code, except that in a Rural Area the

average residential Net Densities on the parcels to be developed shall be at least ten units per acre. Minimum densities for Localities that are not Rural Areas may be found at Appendix 1 of the Housing Element Law memorandum issued by the Department and found at

<http://www.hcd.ca.gov/hpd/hrc/plan/he/ab2348stat04ch724.pdf>.

(5) Be located in an area designated for mixed-use or residential development (including areas where these types of development are allowable through a conditional use permit process) pursuant to one of the following adopted plans:

- (A) A general plan adopted pursuant to Section 65300 of the Government Code.
- (B) A project area redevelopment plan approved pursuant to Section 33330 of the Health & Safety Code.
- (C) A regional blueprint plan as defined in the California Regional Blueprint Planning Program administered by the Business, Transportation and Housing Agency, or a regional plan as defined in Section 65060.7 of the Government Code.

(6) Have any of the following:

- (A) at least 75 percent of the area included within the Qualifying Infill Project or Qualifying Infill Area as previously improved (including areas where improvements have been demolished) or used for any use other than open space, agriculture, forestry, or mining waste storage; or
- (B) at least 75 percent of the perimeter of the Qualifying Infill Project or Qualifying Infill Area adjoining parcels that are developed with Urban Uses, or is separated from parcels that are developed with Urban Uses only by an improved public right-of-way. In calculating this percentage, perimeters bordering navigable bodies of water and improved parks shall not be included; or
- (C) the combination of at least 50% of the area included within the Qualifying Infill Project or Qualifying Infill Area as previously improved (including areas where improvements have been demolished) or used for any use other than open space, agriculture, forestry or mining waste storage, and at least 50% of the perimeter of the Qualifying Infill Project or Qualifying Infill Area adjoining parcels that are developed with Urban

Uses, or is separated from parcels that are developed with Urban Uses only by an improved public right-of-way. In calculating this percentage, perimeters bordering navigable bodies of water and improved parks shall not be included.

(7) If located in a redevelopment project area, meet the replacement housing requirements contained in subdivision (a) of Section 33413 of the Health & Safety Code.

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

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

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

(3) include a Qualifying Infill Project that cannot contain more than 50 percent of the total housing units proposed for the Qualifying Infill Area.

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

Section 304. Eligible Costs

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

- (1) The creation, development, or rehabilitation of parks or open space. No more than \$200 million of the total available Program funds shall be awarded for this activity.
 - (2) Water, sewer, or other utility service improvements and relocation.
 - (3) Streets and road construction and improvement.
 - (4) Required replacement of transit station parking spaces.
 - (5) The minimum residential per unit parking space in parking structures as required by local land use entitlement approval, not to exceed one parking space per residential unit.
 - (6) Transit linkages and facilities, including, but not limited to, related access plazas or pathways, or bus and transit shelters.
 - (7) Facilities that support pedestrian or bicycle transit.
 - (8) Traffic mitigation devices, such as street signals.
 - (9) Site preparation or demolition.
 - (10) 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.
 - (11) Storm drains, storm water detention basins, culverts, and similar drainage features.
 - (12) Required environmental remediation necessary for the development of the Capital Improvement Project, where the cost of the remediation does not exceed 50% of the Program grant amount.
 - (13) Site acquisition or control for the Capital Improvement Project including, but not limited to, easements and rights of way.
 - (14) Other capital asset costs approved by the Department and required as a condition of local approval for the Capital Improvement Project.
- (b) Impact fees required by local ordinance are eligible for funding only if used for identified eligible Capital Assets.

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

Section 305. Grant Terms and Limits

- (a) The total maximum grant amount shall be limited based on the number of units in the Qualifying Infill Project or Qualifying Infill Area, the bedroom count of these units, and the density and affordability of the housing to be developed. The Department shall publish a table listing per unit grant limits for each NOFA based on these factors. The total actual grant amount shall be based upon the lesser of the amount necessary to fund the Capital Improvement Project or the maximum amount calculated from the table published by the Department.
- (b) For Qualifying Infill Projects, the Program grant amount shall not be less than \$500,000 or \$250,000 for Rural Areas. The Program grant amount for Qualifying Infill Projects shall not exceed \$20 million for each NOFA. For Qualifying Infill Areas and multi-phased Qualifying Infill Projects with over 200 units that elect to be scored pursuant to Section 309, the Program grant amount shall not be less than \$2 million, or \$1 million for Rural Areas. The Program grant amount for Qualifying Infill Areas and multi-phased Qualifying Infill Projects with over 200 units that elect to be scored pursuant to Section 309 shall not

exceed \$30 million for each NOFA. Over the life of the Program, the total of all Program awards for any single Qualifying Infill Project, Qualifying Infill Area or multi-phased Qualifying Infill Project with over 200 units, including the Qualifying Infill Project within a Qualifying Infill Area, shall not exceed \$50 million. The Department will fund only one application for each Capital Improvement Project or portion thereof. In each NOFA, the Department will fund only one application for each Qualifying Infill Project and Qualifying Infill Area.

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

Qualifying Infill Area, disbursement of funds for improvements in excess of those needed for the first phase of the Qualifying Infill Project shall be conditioned i) on the need for the additional improvements at the time of the disbursement request and ii) the receipt of evidence acceptable to the Department that the housing development(s) proposed to be supported by the additional fund disbursement are consistent with applicable planning and zoning requirements.

- (h) Where approval by a local public works department, or its equivalent, is required for the Capital Improvement Project, the applicant must submit, prior to the disbursement of grant funds, a statement from that department, or other documentation acceptable to the Department, indicating that the Capital Improvement Project is consistent with all applicable policies and plans enforced or implemented by that department.
- (i) Recipients will be required to repay disbursed Program grant funds where construction of residential units used as the basis for calculating the grant amount pursuant to Section 305(a) has not received building permits within 5 years from the date of the Program grant award. The Department may provide one extension to these deadlines, for a term not to exceed 5 years, if the Recipient demonstrates that construction has not begun for reasons outside their control, such as deteriorating market conditions. The amount to be repaid shall be the same proportion to the total grant amount as the number of residential units where construction has not timely commenced to the total number of designated residential units.

ARTICLE 3. Application Procedures

Section 306. Application Process

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

- (c) Applicant Entities shall be the following:
- (1) For Qualifying Infill Projects, the nonprofit or for-profit developer of the Qualifying Infill Project, either by itself or as a joint applicant with a Locality, public housing authority or redevelopment agency with jurisdiction over the area in which the Qualifying Infill Project is located.
 - (2) For Qualifying Infill Areas, a Locality, public housing authority, or redevelopment agency that has jurisdiction over the Qualifying Infill Area, or one of these entities together with a BID as joint applicants, provided that the BID includes, or is contained within, the Qualifying Infill Area.
- (d) The Department shall evaluate applications for compliance with the threshold requirements listed in Section 307, and score them based on the application selection criteria listed in Sections 308 and 309. The highest scoring applications that meet all threshold requirements shall be selected for funding as specified in the NOFA, except that the Department may make adjustments in this procedure to meet approximately the following geographic distribution objectives of each NOFA:
- (1) target 45% of total funds to projects located in Southern California (Kern, San Bernardino, San Luis Obispo, Santa Barbara, Ventura, Los Angeles, Orange, Riverside, San Diego or Imperial counties);
 - (2) target 10% of total funds to projects located in the Central Valley (Fresno, Kings, Madera, Merced, San Joaquin, Stanislaus and Tulare counties); and
 - (3) target 45% of total funds to projects located in Northern California (those not located in the counties specified in previous paragraphs (d)(1) and (d)(2)).
- (e) The NOFA may specify a minimum number of ranking points for a Project to be eligible for funding.
- (f) The Department may elect to not evaluate compliance with some or all threshold requirements for applications that are not within a fundable range, as indicated by a preliminary point scoring.
- (g) Applications selected for funding shall be approved subject to conditions specified by the Department.

Section 307. Application Threshold Requirements

- (a) To be considered for Program funding, applications must include a Qualifying Infill Project, including those Qualifying Infill Projects used to establish the eligibility of a Qualifying Infill Area, and meet all of the following threshold requirements:
 - (1) The application must be for a Capital Improvement Project eligible pursuant to Section 303 and the applicant must be eligible pursuant to subdivision 306(c).
 - (2) All proposed uses of Program funds must be eligible pursuant to Section 304.
 - (3) The application must be sufficiently complete to assess the feasibility of the application and its compliance with Program requirements.
 - (4) Construction of the Capital Improvement Project has not commenced as of the deadline for submittal of applications set forth in the NOFA.
 - (5) The Capital Improvement Project is infeasible without Program funds, and other available funds are not being supplanted by Program funds.
 - (6) The applicant or developer of the Capital Improvement Project must have site control sufficient to ensure the timely commencement of the Capital Improvement Project as determined by the Department.
- (b) To be eligible for funding, a Qualifying Infill Area must meet all of the following threshold requirements:
 - (1) It must have a definite, described border.
 - (2) It must contain at least one Qualifying Infill Project completely within its borders.
 - (3) It must be subject to a public plan or ordinance adopted for the purpose of guiding development within the area. The process leading to the adoption of this plan or ordinance must have public notification as required by law and involved significant input from affected stakeholders, including potential developers. Examples

of qualifying plans include specific plans, redevelopment area plans, or transit station area plans.

- (4) The applicant must identify a mechanism, such as a minimum density ordinance or a recorded, binding covenant, acceptable to the Department to reliably ensure that future development will occur at an overall Net Density equaling or exceeding that set forth in paragraph 303(a)(4) and the Net Density proposed in the application for the purposes of rating pursuant to Section 309 and determining the maximum grant amount pursuant to Section 305. This mechanism must be in effect and legally enforceable prior to the disbursement of Program funds.
- (c) Applicants shall designate the proposed residential units in the Qualifying Infill Project, or within the Qualifying Infill Area that the applicant intends to utilize for the purpose of establishing the maximum Program grant amount pursuant to Section 305 and for the purpose of rating applications pursuant to Section 308 or 309. Any such designated units must be utilized for both purposes. Construction shall not have commenced on any such designated units prior to the deadline for application submittal set forth in the NOFA. 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 Subdivision 305 and for rating purposes pursuant to Sections 308 or 309, shall be maintained or exceeded through the completion of each development phase or 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 it determines that the local requirement will reliably result in completion of the required Affordable Units within a reasonable period of time.

Section 308. Application Selection Criteria for Qualifying Infill Projects

Applications for Capital Improvement Projects associated with Qualifying Infill Projects shall be rated using the criteria detailed below. Applicants may elect to exclude from consideration discrete phases or portions of their developments, provided that these portions or phases are not included for other purposes under these Guidelines, including rating pursuant to this Section 308 and determining the maximum grant amount calculated pursuant to Section 305(a). For a Qualifying Infill Project consisting of a multi-phased development with 200 or more residential units which meets the eligibility and threshold requirements for a Qualifying Infill Project under Sections 303 and 307 respectively, the applicant may elect to be rated pursuant to the criteria in this Section 309 and ranked for

funding with Qualifying Infill Area applications for funds allocated in the NOFA for Qualifying Infill Areas.

(a) Project Readiness – 30 points Maximum

(1) Environmental Review Status—8 points maximum

Applications will be awarded points based on the extent to which environmental reviews have been completed for the Qualifying Infill Project:

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

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

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

(2) Land Use Entitlement Status—8 points maximum

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

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

(B) Applications which demonstrate that all necessary discretionary local land use approvals have been granted for the Qualifying Infill Project shall receive 8 points.

(3) Funding Commitments—8 points maximum

Applications will be awarded points based on the extent to which the Qualifying Infill Project and Capital Improvement Project can secure

sufficient funding in a timely manner, as follows:

- (A) 4 points shall be awarded for obtaining enforceable commitments for all construction period funding for the Qualifying Infill Project, excluding tax credit equity, tax exempt bonds, and funding provided by this and other Department funding program(s) provided that the other Department funding is awarded prior to or simultaneously with the final rating and ranking of the Program application. For self-help developments utilizing USDA 502 loans, 4 points will be awarded if the active 523 grantee has site control and a letter of support from USDA.
 - (B) 4 points shall be awarded for obtaining enforceable commitments for all construction period funding for the Capital Improvement Project, excluding funding provided by another Department funding program provided that this funding is awarded prior to or simultaneously with the final rating and ranking of the Program application.
- (4) Local Support—6 points maximum

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

- (A) Submittal of a letter of support from the legislative body or planning department of the Locality in which the Qualifying Infill Project is located;
- (B) The Qualifying Infill Project is located on a site designated or identified in the housing element of the local general plan as suitable for housing development consistent with application;
- (C) Obtaining all discretionary local land use approvals and commitments for local public funding for the Qualifying Infill Project; or
- (D) Obtaining a funding commitment or commitments from a local public agency or agencies for the Capital Improvement Project equivalent to at least 25 percent of the Program grant.

(b) Affordability – 30 points Maximum

Applications will be awarded points based on the percentage of units in the Qualifying Infill Project restricted to occupancy by various income groups. Applications designating only rental units in the Qualifying Infill Project may elect to have their applications scored in accordance with any one of the three following scales. Applications designating ownership units, or a

combination of rental and ownership units, must utilize the scale set forth in paragraph 3 below.

- (1) The scale used by MHP, as specified in CCR Section 7320(b)(1). Applicants making this election shall be awarded 30/35 points for every 1 point they would be eligible to receive using MHP's system (so that applications eligible for the maximum possible 35 points using the MHP scale receive the maximum possible points in this category for the Program)
- (2) The scale used by TCAC to score 9% low income housing tax credit applications, under the Lowest Income point category. Applicants making this election shall be awarded 30/52 points for every 1 point they would be eligible to receive using TCAC's system (so that applications eligible for the maximum possible 52 points using the 9% scale receive the maximum possible points in this category for the Program).
- (3) The following scale:
 - (A) 0.13 points will be awarded for each percent of total units that are owner-occupied and restricted to initial occupancy by households with incomes not exceeding the Moderate Income limit.
 - (B) 0.30 points will be awarded for each percent of total units that are owner-occupied and restricted to occupancy by households with incomes not exceeding the Lower Income limit.
 - (C) 0.20 points will be awarded for each percent of total units that are rental units restricted to occupancy by households with incomes not exceeding 50% of Area Median Income.
 - (D) 1 point will be awarded for each percent of total units that are rental units restricted to occupancy by households with incomes less than or equal to 30% of Area Median Income, or that are or will be covered by a long-term, project-based rental or operating subsidy contract under a program that either has a history of predominately serving households at this income level or that by design will reliably serve this population.
- (4) Owner-occupied units shall be subject to a recorded covenant with a duration of at least 30 years that includes either a resale restriction or a requirement for sharing equity upon resale.
- (5) For rental units used as the basis for point scores in the application, rent limits for initial occupancy and for each subsequent occupancy

shall be based on unit type, applicable income limit, and area in which the Qualifying Infill Project is located, following the calculation procedures used by TCAC. Rents shall be restricted in accordance with the rent and income limits specified in the application and approved by the Department, and set forth in a legally binding agreement recorded against the Qualifying Infill Project with a duration of at least 55 years. Rents shall not exceed 30% of the applicable income eligibility level.

(c) Density – 20 points Maximum.

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

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

Example = Mixed-use project, $\frac{3}{4}$ acre, urban site, with 12 1-bedroom units at 800 sq. ft. each, 12 2-bedroom units at 1100 sq. ft. each, and 5000 sq. ft. of commercial space.

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

$$12 \times 0.9 \text{ (1 bedroom units)} = 10.8$$
$$12 \times 1.2 \text{ (2 bedroom units)} = 14.4$$

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

For our example, the largest unit is a 2-bedroom, 1100 square foot unit. 5000 square feet (commercial space) would accommodate 4 of these units. Multiply that number by the appropriate factor:

$$4 \times 1.2 \text{ (2-bedroom units)} = 4.8$$

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

$$(10.8+14.4+4.8)/30 = 1/.75=1.3333 \times 100=133.33\%$$

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

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

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

(d) Access to Transit – 20 points Maximum

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

- (1) 20 points will be awarded to a Qualifying Infill Project within one half mile of a Transit Station or Major Transit Stop measured by a walkable route from the nearest boundary of the Qualifying Infill Project to the outer boundary of the site of the Transit Stop or Major Transit Station.
- (2) 10 points will be awarded to a Qualifying Infill Project within one mile of a Transit Station or Major Transit Stop measured by a walkable route from the nearest boundary of the Qualifying Infill Project to the outer boundary of the site of the Transit Station or Major Transit Stop.
- (3) For the purposes of this subdivision (d), "walkable route" shall mean a route which after completion of the proposed Project, shall be free of negative environmental conditions that deter pedestrian circulation, such as barriers; stretches without sidewalks or walking paths; noisy vehicular tunnels; streets, arterials or highways without regulated crossings that facilitate pedestrian movement; or stretches without lighted streets.

(e) Proximity to Amenities – 20 points Maximum

Applications will be awarded points based on the proximity or accessibility of the Qualifying Infill Project to the following existing amenities or amenities that will be in service when the Qualifying Infill Project is completed. Applications may receive only one award of points from each of the following subcategories:

- (1) The Qualifying Infill Project is within 1/4 mile of a public park (1/2 mile for Rural Area projects) (not including school grounds unless there is a bona fide, formal joint use agreement between the jurisdiction responsible for the parks/recreational facilities and the school district providing availability to the general public of the school grounds and/or facilities), 6 points, or within 1/2 mile (1 mile for Rural Area projects), 4 points.
- (2) The Qualifying Infill Project is within 1 mile of a locally recognized employment center with a minimum of fifty (50) full-time employees (2 miles for Rural Area projects), 7 points, or within 2 miles (4 miles for Rural Area projects), 4 points. An employment center is a locally recognized concentration of employment opportunities practically available to the residents of the proposed Qualifying Infill Project, such as a large hospital, industrial park, commercial district, or office area.
- (3) The Qualifying Infill Project is within 1 mile of a locally recognized retail center with a minimum of fifty (50) full-time employees (2 miles for Rural Area projects), 7 points, or within 2 miles (4 miles for Rural Area projects), 4 points. A retail center is a downtown area or recognized neighborhood or regional shopping mall.
- (4) For Qualifying Infill Projects where at least 50% of the units have two or more bedrooms, the Qualifying Infill Project is within 1/4 mile of a public school or community college that residents of the Qualifying Infill Project may attend (1/2 mile for Rural Area projects), 7 points, or within 1/2 mile (1 mile for Rural Area projects), 4 points.
- (5) For a Qualifying Infill Project that is a Special Needs or single room occupancy development, as defined by TCAC, or a Special Needs or Supportive Housing project, as defined under MHP, the Qualifying Infill Project is located within 1/2 mile of a social service facility that operates to serve residents of the Qualifying Infill Project, 7 points or within 1 mile, 4 points.
- (6) For a Qualifying Infill Project that is reserved for qualified senior citizens under sections 51.2, 51.3 and 51.4 of the Civil Code, the Qualifying Infill Project is within 1/4 mile of a senior center or a facility regularly offering services specifically designed for seniors (1/2 mile for Rural Area projects), 7 points or within 1/2 mile (1 mile for Rural Area projects), 4 points.

(f) Consistency with Regional Plans – 10 points Maximum

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

Section 309. Application Selection Criteria for Qualifying Infill Areas and Large Multi-phased Projects

Applications for Capital Improvement Projects associated with Qualifying Infill Areas shall be awarded points using the criteria detailed below. Applicants may elect to exclude from consideration discrete phases or portions of the developments within the Qualifying Infill Area, provided that these portions or phases are not included for other purposes under these Guidelines, including rating pursuant to this Section 309 and the maximum grant amount calculated pursuant to Section 305(a). For a Qualifying Infill Project consisting of a multi-phased development with 200 or more residential units which meets the eligibility and threshold requirements for a Qualifying Infill Project under Sections 303 and 307 respectively, the applicant may elect to be rated pursuant to the criteria in this Section 309 and ranked for funding with Qualifying Infill Area applications for funds allocated in the NOFA for Qualifying Infill Areas.

(a) Area Readiness –30 points Maximum

Readiness points will be awarded as follows:

- (1) Environmental Review Status—8 points maximum
 - (A) Applications for Qualifying Infill Areas for which a program, master or tiered environmental impact report for which the applicable time periods to file appeals or lawsuits have lapsed has been adopted by the appropriate agency and the developments included in the application constitute subsequent projects subject to environmental review as such pursuant to CEQA Guidelines, Chapter 3, Title 14, CCR, commencing with section 15000 will receive 8 points.
 - (B) Applications for Qualifying Infill Areas for which a draft of a program, master or tiered environmental impact report has been

certified by the appropriate agency and the developments included in the application will constitute subsequent projects subject to environmental review as such pursuant to CEQA Guidelines, chapter 3, title 14, CCR, commencing with section 15000 will receive 4 points.

- (C) Applications for Qualifying Infill Areas for which a draft of a program, master or tiered environmental impact report has been completed and filed with the appropriate agency and the developments included in the application will constitute subsequent projects subject to environmental review as such pursuant to CEQA Guidelines, chapter 3, title 14, CCR, commencing with section 15000 will receive 2 points.
- (D) Applications for Qualifying Infill Areas in which not less than 50% of the land area is on sites that have been subject to a Phase 1 Site Assessment within one year prior to the application due date will receive 2 points.

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

Applications will be awarded points based on the extent that developments within the Qualifying Infill Area can secure necessary entitlements from the local jurisdiction within a reasonable period of time. Points are cumulative in the following subparagraphs as follows:

- (A) Applications which demonstrate that all approvals by a local public works department, or its equivalent, for the Capital Improvement Project within the Qualifying Infill Area have been granted will receive 2 points.
- (B) Applications which demonstrate that the Qualifying Infill Area is subject to a general plan, specific plan, redevelopment area plan, community plan or similar area-specific plan adopted by the Locality in which the Qualifying Infill Area is located and the housing proposed in the application is consistent with such plan will receive 4 points.
- (C) Applications which meet the criteria in Subparagraph (B) above and demonstrate that all necessary discretionary local land use approvals, excluding design review, for not less than one third of the housing units proposed for development within the Qualifying Infill Area have been granted will receive 7 points.
- (D) Applications which meet the criteria in Subparagraph (B) above and demonstrate that all necessary discretionary local land use

approvals, excluding design review, for not less than half of the housing units proposed for development within the Qualifying Infill Area have been granted receive 8 points.

(3) Funding Commitments—8 points maximum

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

- (A) Up to 4 points shall be awarded based on the percentage of total residential units to be developed in the Qualifying Infill Area that are in developments for which enforceable commitments have been obtained for all necessary construction period funding, in accordance with the following schedule, and excluding tax credit equity, tax exempt bonds, and funding provided by this and other Department funding program(s) provided that the other Department funding is awarded prior to or simultaneously with the final rating and ranking of the Program application. For self-help developments utilizing USDA 502 loans, 4 points will be awarded if the active 523 grantee has site control and a letter of support from USDA.

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

- (B) 4 points shall be awarded for obtaining enforceable commitments for all construction period funding for the Capital Improvement Project, excluding funding provided by another Department funding program provided that this funding is awarded prior to or simultaneously with the final rating and ranking of the Program application;
- (C) 2 points shall be awarded for obtaining documentation including, but not limited to, letters of intent, executive-approved term sheets, or a letter from a public agency expressing interest and/or intent to fund the Capital Improvement Project.

(4) Local Support—6 points maximum

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

- (A) Submittal of a letter of support from the legislative body of the Locality having jurisdiction over the Qualifying Infill Area;
- (B) At least 50 percent of the residential units in the Qualifying Infill Area are located on a site or sites designated or identified in the housing element of the local general plan as suitable for housing development consistent with application;
- (C) Obtaining a funding commitment or commitments from a local public agency or agencies for the Capital Improvement Project equivalent to at least 25 percent of the Program grant.

(b) Affordability – 30 points Maximum

Applications will be awarded points based on the percentage of units to be developed in the Qualifying Infill Area that will be restricted to occupancy by various income groups, in accordance with the following schedule.

- (1) 1.0 point will be awarded for each percent of total units that are owner-occupied and restricted to occupancy by households with incomes not exceeding the Moderate Income limit.
- (2) 1.2 points will be awarded for each percent of total units that are owner-occupied and restricted to occupancy by households with incomes not exceeding the Lower Income limit.
- (3) 1.0 point will be awarded for each percent of total units that are rental units restricted to occupancy by households with incomes less than or equal to 60% of Area Median Income.
- (4) 2.0 points will be awarded for each percent of total units that are rental units restricted to occupancy by households with incomes less than or equal to 30% of Area Median Income.
- (5) Owner-occupied units proposed for points under this category shall be subject to a recorded covenant with a duration of at least 30 years that includes either a resale restriction or a requirement for sharing equity upon resale.
- (6) For rental units used as the basis for point scores in the application, rent limits for initial occupancy, and for each

subsequent occupancy, shall be based on unit type, applicable income limit, and area in which the Qualifying Infill Area is located, following the calculation procedures used by TCAC. Rents shall be restricted in accordance with the rent and income limits specified in the application and approved by the Department, and set forth in a legally binding agreement recorded against housing developments in the Qualifying Infill Area with a duration of at least 55 years. Rents shall not exceed 30% of the applicable income eligibility level.

(c) Density – 20 points Maximum

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

- (1) Net Density will be adjusted for unit size by multiplying the factors shown below by the total number of units in each unit size category, then summing the resulting products then dividing by the net area of all projects For a suburban three site QIA:
 Project # 1 7 2-Bedroom Units 5 3-Bedroom Units .75 Acre
 Project # 2 6 2-Bedroom Units 8 3-Bedroom Units .65 Acre
 Project # 3 9 2-Bedroom Units 7 3-Bedroom Units .50 Acre

The adjusted Net Density would be (22 2-bedroom units times 1.2 plus 20 3-bedroom units times 1.6) or 58.4. Dividing this by 20 (Suburban Minimum Density) and 1.9 acres (net area of the 3 sites) and multiplied by 100 results in an Adjusted Net Density as a Percentage of Required Density of 153.7% which yields 7.5 points for Density.

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

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

Adjusted Net Density as a Percentage of Required Density	Points
300% or More	20
250% to 299.9%	15
200% to 249.9%	10
150% to 199.9%	7.5
110% to 149.9%	5
Less than 110%	0

(d) Access to Transit – 20 points Maximum

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

(e) Proximity to Amenities – 20 points Maximum

Applications will be awarded points based on the amenities in the Qualifying Infill Area or within ½ mile of its boundary, including amenities that will be in service when construction of the Qualifying Infill Project for the Qualifying Infill Area is completed. Points shall be awarded based on the number of amenities per ten (10) acres in the Qualifying Infill Area.

6 or more amenities per 10 acres: 20 Points
 2 to 5 amenities per 10 acres: 10 Points
 0 to 1 amenities per 10 acres: 0 Points

(1) Amenities include:

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

(B) Locally recognized employment center with a minimum of fifty (50) full-time employees. An employment center is a locally recognized concentration of employment opportunities such as a large hospital, industrial park, commercial district, or office area.

(C) Locally recognized retail center with a minimum of fifty (50) full-time employees. A retail center is a downtown area or recognized neighborhood or regional shopping mall.

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

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

(F) Senior centers or facilities regularly offering services specifically designed for seniors residing in the Qualifying Infill Area.

(f) Consistency with Regional Plans – 10 points Maximum

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

ARTICLE 4. Program Operations.

Section 310. Legal Documents.

Upon the award of funds the Department shall enter into a Standard Agreement with the Recipient constituting a conditional commitment of funds. This contract shall require the parties to comply with the requirements and provisions of these Guidelines. The Standard Agreement shall encumber funds in an amount sufficient to fund the approved project, subject to limits established in the NOFA and consistent with the application. The Standard Agreement shall contain, but not be limited to, the following as appropriate for the activity:

- (a) a description of the approved Capital Improvement Project and the approved Qualifying Infill Project or Area, or both, and the permitted uses of Program funds;

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

Section 311. Reporting Requirements

- (a) During the term of the Standard Agreement and according to the annual deadline identified in the Standard Agreement, the Recipient shall submit, upon request of the Department, an annual performance report regarding the construction of the Capital Improvement Project

and the development, construction, affordability and occupancy of housing designated for development in the application. The reports will be filed on forms provided by the Department.

- (b) At any time during the term of the Standard Agreement, the Department may perform or cause to be performed a financial audit of any and all phases of the Recipient's Project. At the Department's request, the Recipient shall provide, at its own expense, a financial audit prepared by a certified public accountant.

Section 312. Performance Requirement

- (a) Program funds must be disbursed in accordance with deadlines specified in the Standard Agreement, and in no event later than February 1, 2012.
- (b) The housing units to be developed in the Qualifying Infill Project and the housing designated in the application for a Qualifying Infill Area must be completed, as evidenced by receipt of a certificate of occupancy, within a reasonable period of time as set forth in the Standard Agreement, but not more than 8 years from the date of the award of the Program grant. This period may be extended by the period of any extension granted pursuant to Subdivision (i) of Section 305.

Section 313. Defaults and Cancellations

- (a) In the event of a breach or violation by the Recipient of any of the provisions of the Standard Agreement, the Department may give written notice to the sponsor to cure the breach or violation within a period of not less than 15 days. If the breach or violation is not cured to the satisfaction of the Department within the specified time period, the Department, at its option, may declare a default under the Standard Agreement and may seek legal remedies for the default including the following:
 - (1) The Department may seek, in a court of competent jurisdiction, an order for specific performance of the defaulted obligation or the appointment of a receiver to complete the Project in accordance with Program requirements.
 - (2) The Department may seek such other remedies as may be available under the relevant agreement or any law.
- (b) Funding commitments and Standard Agreements may be canceled by the Department under any of the following conditions:

- (1) The objectives and requirements of the Program cannot be met by continuing the commitment or Standard Agreement;
 - (2) Construction of the Capital Improvement Project cannot proceed in a timely fashion in accordance with the timeframes established in the Standard Agreement; or
 - (3) Funding conditions have not been or cannot be fulfilled within required time periods.
- (c) Upon receipt of a notice of intent to cancel the grant from the Department, the Recipient shall have the right to appeal to the Director of the Department.

Section 314. Prevailing Wages

For the purposes of the State Prevailing Wage Law (Labor Code Sections 1720 – 1781), a grant under the Program shall be considered public funding for the construction, rehabilitation, demolition, relocation, preservation, or other physical improvement of the Capital Asset_ subject to the provisions of the State 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 the Qualifying Infill Area_unless such funding is considered public funding under the State Prevailing Wage Law. It is not the intent of the Department in these regulations to subject Qualifying Infill Projects or Qualifying Infill Areas to the State Prevailing Wage Law by reason of Program funding of the Capital Improvement Project in those circumstances where such public funding would not otherwise make the Qualifying Infill Project or Qualifying Infill Area subject to the State Prevailing Wage Law. Although the use of Program funds does not require compliance with federal Davis Bacon wages, other funding sources may require compliance with federal Davis Bacon wages.