

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT  
DIVISION OF FINANCIAL ASSISTANCE**

**Infill Infrastructure Grant Program  
Transit-Oriented Development Housing Program**  
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December 3, 2012

**TO:** All Interested Parties

**FROM:** Eugene Lee, Section Chief  
Infill Infrastructure Grant and TOD Housing Programs

**SUBJECT:** Guideline Change for Multi-phased Projects  
Infill Infrastructure Grant Program (IIG)

This memo announces changes to the Infill Infrastructure Grant Program (IIG) Guidelines (Rev. 2/28/08 and 1/30/09). The guideline changes specifically apply to Qualifying Infill Projects (QIPs) with 200 or more residential units funded from IIG NOFAs Round 1 and Round 2.

The Department has determined that current economic conditions are continuing to constrain the construction of housing, particularly large, multi-phased projects (MPPs) in most regions of the state. According to some stakeholders, the construction of IIG market-rate units in challenged housing markets may have the adverse effect of impairing, or possibly preventing, the development of affordable units associated with MPPs.

The Department supports the expeditious use of funds and the rapid creation of housing, infrastructure, and jobs represented in the IIG awards.

To encourage the development of feasible infill housing in current market conditions, the Department is amending the IIG Guidelines to allow changes in housing developments and infrastructure in MPPs subject to Department approval. Project changes will result in a commensurate reduction of grant funds based on existing program requirements used in determining eligibility and grant amounts. Unused funds resulting from modified projects will be included in a future IIG Program Notice of Funding Availability.

The changes would permit a Recipient of IIG funds to change the original MPP project, upon Department approval, using of one of the following options:

1. Allow project changes, unit reductions, and grant reductions if the original MPP eligibility and scoring requirements remain satisfied (e.g. constructing 200 housing units in multiple housing phases). The Department would require

evidence of all funding commitments for the first phase of housing by June 1, 2013; **OR**

2. Convert the MPP into a Qualifying Infill Project (single or multi-phased) subject to all QIP program eligibility and grant calculation requirements.

Recipients electing to modify their MPP using one of these options must notify the Department and evidence feasibility of the modified project by April 1, 2013, 5:00 PM.

Election of either project modification option does not amend grant disbursement, housing construction, and completion deadlines pursuant to IIG statute and guidelines.

You may contact the IIG Program by emailing us at [infill@hcd.ca.gov](mailto:infill@hcd.ca.gov) or call (916) 324-1555 if you have any questions.

Thank you and we look forward to your participation in this important process.

#### Attachments

1. Attachment 1 - IIG Program Guidelines, Section 315 (New).
2. Attachment 2 - IIG Program Guidelines (Rev. 2/28/08), Section 307, and IIG Program Guidelines (Rev. 1/30/09), Section 308.
3. Attachment 3 - IIG Program Guidelines (Rev. 2/28/08) and (Rev. 1/30/09), Section 305.

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**Attachment 1**

**Guideline Change**

**December 3, 2012**

**Infill Infrastructure Grant Program**

**ARTICLE 4. Program Operations.**

**Section 315. Conversion of a Multi-Phased Development  
with 200 or More Residential Units**

For a Qualifying Infill Project awarded Program funds based on a multi-phased development with 200 or more residential units pursuant to Sections 308 and 309 of the IIG Guidelines (February 28, 2008), and Sections 309 and 310 of the IIG Guidelines (January 30, 2009), a Recipient may, upon Department approval, elect the following:

1. The project remains a multi-phased development with 200 residential units or more; but the original number of residential units used to calculate the Grant amount may be reduced. As a result of the reduction in number and/or type of residential units, the scope of work for the Capital Improvement Project associated with the project may also be reduced. In addition, the Grant amount originally awarded will be reduced accordingly based on the methodology used by Department to calculate the Grant award. The Recipient choosing to make this election shall be subject to all of the Program requirements imposed on multi-phased developments to include, but not be limited to:
  - a. Completion of the minimum requirement of 200 residential units with 15% of the units consisting of affordable residential units.
  - b. Recipients are joint and severally liable for breach of the Standard Agreement.
  - c. Full repayment of the Program funds if all conditions are not met.
  - d. The Recipient shall demonstrate, for review and approval by the Department, all funding commitments for first phase of housing no later than June 1, 2013. For the purposes of this section, "Funding Commitments" shall be evidenced by funding commitments exemplified in Section 309(a) of the 2008 and 2009 Program Guidelines.
2. The project converts to a Qualifying Infill Project (single or multi-phased development) and shall be subject to all of the requirements under the respective Program Guidelines to include, but not be limited to:
  - a. The Recipient must demonstrate that Program funds are necessary for Project feasibility.

- b. The Recipient must submit, for review and approval by the Department, revised milestones for the Capital Improvement Project and housing units evidencing compliance with the performance requirements as required by the Program to include but not limited to Section 305(i) "Grant Terms and Limits" and Section 312 "Performance Requirements" (Program Guidelines February 28, 2008) or Section 306 "Performance Requirements" (Program Guidelines January 30, 2009).
- c. The Project satisfies the threshold requirements of Section 307 "Application Threshold Requirements" (Program Guidelines February 28, 2008) or Section 308 "Application Threshold Requirements" (Program Guidelines January 30, 2009).
- d. The actual Grant amount shall be calculated pursuant to Section 305 "Grant Terms and Limits" of the 2008 and 2009 Program Guidelines.
- e. One or more recipients may elect to withdraw from the award if all parties concur and upon approval by the Department.

A Recipient's election to either remain as a multi-phased development with a minimum of 200 residential units or convert to a Qualifying Infill Project shall not amend housing construction and completion deadlines established in the Program Guidelines or any amendments therein. In addition, disbursement condition requirements identified in the IIG grant documents shall continue to apply.

In order to be considered for one of the above options, a Recipient must notify the Department of the chosen option election and submit documents demonstrating the feasibility of the modified project by no later than 5:00 pm on April 1, 2013. The Department shall review the election and submitted documents to ensure that the modified project shall satisfy the requirements of the Program, which include but are not limited to, completion of the Capital Improvement Project as it relates to the statutory disbursement deadline and the construction and completion of the housing development(s).

## **Attachment 2**

### IIG Program Guidelines (Rev. 2/28/08) excerpt

#### 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.

IIG Program Guidelines (Rev. 1/30/09) excerpt

Section 308. 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 Section 307(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 Section 303(a)(4) and the Net Density

proposed in the application for the purposes of rating pursuant to Section 310 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 Sections 309 or 310. Any such designated units must be utilized for both purposes.

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 305 and for rating purposes pursuant to Sections 309 or 310, 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.

- (d) Construction shall not have commenced on any units designated in the application prior to the deadline for applications submittal set forth in the NOFA, except for 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 August 24, 2007 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.

**Attachment 3**

IIG Program Guidelines (Rev. 2/28/08) excerpt

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.

IIG Program Guidelines (Rev. 1/30/09) excerpt

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. Replacement housing units required to be provided by a community redevelopment agency pursuant to redevelopment law 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 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 310, 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 310 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.
- (d) 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.
- (e) The applicant must demonstrate that the Qualifying Infill Project or the housing to be developed in the Qualifying Infill Area, as proposed in the application, is financially feasible as evidenced by documentation such as, but not limited to, a market study,

project pro-forma, sources and uses statement, or other feasibility documentation that is standard industry practice for the type of proposed housing development.

- (f) Where the Recipient entity includes a Locality, redevelopment agency or housing authority, and the Qualifying Infill Project is receiving low income housing tax credits, the Recipient may provide Program funds to the developer of the Qualifying Infill Project in the form of a zero (0) percent, deferred payment loan, with a term of at least 30 years for home ownership developments, or a term of at least 55 years for rental developments. No periodic payments shall be required under the loan. 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 public agency lender and the developer borrower shall be subject to the review and approval of the Department prior to making the loan.
- (g) 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.
- (h) 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.
- (i) 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 within the 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.
- (j) 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.

- (k) 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.

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