

Prop 1C Infill Incentive Grant Program
Statutes and HCD Staff Questions and Comments

Housing and Emergency Shelter Trust Fund Act of 2006
(Proposition 1C)

53545. The Housing and Emergency Shelter Trust Fund of 2006 is hereby created in the State Treasury. The Legislature intends that the proceeds of bonds deposited in the fund shall be used to fund the housing-related programs described in this chapter over the course of the next decade. The proceeds of bonds issued and sold pursuant to this part for the purposes specified in this chapter shall be allocated in the following manner:

....

(b) Eight hundred fifty million dollars (\$850,000,000) shall be deposited in the Regional Planning, Housing, and Infill Incentive Account, which is hereby created in the fund. Funds in the account shall be available, upon appropriation by the Legislature, and subject to such other conditions and criteria as the Legislature may provide in statute, for the following purposes:

(1) For infill incentive grants for capital outlay related to infill housing development and other related infill development, including, but not limited to, all of the following:

(A) No more than two hundred million dollars (\$200,000,000) for park creation, development, or rehabilitation to encourage infill development.

(B) Water, sewer, or other public infrastructure costs associated with infill development.

(C) Transportation improvements related to infill development projects.

(D) Traffic mitigation.

(2) For brownfield cleanup that promotes infill housing development and other related infill development consistent with regional and local plans.

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Senate Bill 86 of 2007, as modified by AB 192 and AB 1053

SEC. 27. Section 53545.12 is added to the Health and Safety Code, to read:

53545.12. For the purposes of the grant program established in Section 53545.13, the following definitions apply:

(a) "Capital improvement project" means the construction, rehabilitation, demolition, relocation, preservation, acquisition, or other physical improvement of a *capital asset*, as defined in subdivision (a) of Section 16727 of the Government Code, that is an integral part of, or necessary to facilitate the development of, a qualified infill project or qualified infill area. Capital improvement projects that may be funded under the grant program established by this act include, but are not limited to, those related to all of the following:

(1) The creation, development, or rehabilitation of *parks or open space*.

(2) *Water, sewer, or other utility service improvements*.

(3) *Streets and roads, parking structures, or transit linkages and facilities, including, but not limited to, related access plazas or pathways, or bus and transit shelters*.

(4) *Facilities that support pedestrian or bicycle transit*.

(5) *Traffic mitigation*.

(6) *Qualifying infill project or qualifying infill area site preparation or demolition*.

(7) *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*.

(b) "Department" means the Department of Housing and Community Development.

(c) "Eligible applicant" means either, or a combination, of the following:

(1) A nonprofit or for-profit developer of a qualifying infill project.

(2) A city, county, city and county, public housing authority, or redevelopment agency that has jurisdiction over a qualifying infill area.

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The referenced definition of "capital assets" is on page 10. Generally, this term refers to physical property with a useful life of 15 years or more, plus equipment with a useful life of two years or more.

Beyond those listed, are there other improvement types that should be eligible?

What costs should be eligible under the category of "transit linkages and facilities," beyond those listed?

HCD has been advised the intent of the Legislature was to limit this program to infrastructure improvements necessary to promote additional infill housing development, and not to fund other housing development costs. There is also a general consensus that infrastructure is a key impediment to increased housing production. For these reasons, we do not propose to use this program to fund other housing development costs.

At this point, HCD proposes limiting these funds to publically owned infrastructure, including that developed under contract by private parties.

Applicants may consist of either developers or specified public agencies, with business improvement districts eligible as co-applicants. Note that transit agencies, sewer districts, etc. are not directly eligible, but that the eligible agencies would be free to have them complete improvements under contract.

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(3) (A) A city, county, city and county, public housing authority, or redevelopment agency that has jurisdiction over a qualifying infill area and applies for funding jointly with an "owners' association," as defined in Section 36614.5 of the Streets and Highways Code, for a business or property improvement district that includes the qualifying infill area.

(B) Prior to receiving funding, but after being awarded a grant, the joint applicants described in subparagraph (A) shall submit to the department documentation from the local permitting authority demonstrating that the actual number of permitted housing units associated with the qualifying project is equal to or greater than the number of housing units in the grant application.

(d) "**Qualifying infill area**" means a contiguous area located within an urbanized area (1) that has been *previously developed*, or where at least 75 percent of the perimeter of the area adjoins parcels that are developed with urban uses, and (2) in which at least one development application has been *approved or is pending approval* for a residential or mixed-use residential project that meets the definition and criteria in this section for a qualified infill project.

(e) (1) "**Qualifying infill project**" means a residential or mixed-use residential project located within an urbanized area on a site that has been *previously developed*, or on a vacant site where at least 75 percent of the perimeter of the site adjoins parcels that are developed with urban uses.

(2) A property is adjoining the side of a project site if the property is separated from the project site only by an improved public right-of-way.

(f) "Urbanized area" means an incorporated city or an urbanized area or urban cluster as defined by the United States Census Bureau. For unincorporated areas outside of an *urban area* or urban cluster, the area must be within a designated urban service area that is designated in the local general plan for urban development and is served by the public sewer and water.

(g) "*Urban uses*" mean any residential, commercial, industrial, public institutional, transit or transportation passenger facility, or retail use, or any combination of those uses.

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Subsection (3) was just added by AB 1053. It allows a business improvement district to be a joint applicant, along with an otherwise eligible public agency.

Subsection (3)(B) appears to require that the building permits be issued for housing promised by an application involving a business improvement district prior to release of program funds.

Funds may be used for two purposes: (1) infrastructure improvements necessary for development of an area ("qualifying infill areas"), which will allow for additional housing development, and (2) infrastructure improvements necessary for the development of specific identified housing or mixed use developments ("qualifying infill projects").

Note that qualifying infill areas must have at least one development project in the works (with entitlements or with entitlements in process) that meets the requirements for a qualifying infill project, including some affordable units.

One way for areas or sites to qualify for funding is to be previously "developed." This reasonably excludes areas used for agriculture. Beyond vacant land, are there other logical exclusions?

Are there other issues related to the definitions of "qualifying infill area" and "qualifying infill project?" These are key definitions.

Note that, for the purpose of evaluating whether an area or project meets the test of being largely surrounded by developed land, parks do not qualify as development.

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SEC. 28. Section 53545.13 is added to the Health and Safety Code, to read:

53545.13. (a) The *Infill Incentive Grant Program* of 2007 is hereby established to be administered by the department.

(b) Upon appropriation of funds by the Legislature for the purpose of implementing paragraph (1) of subdivision (b) of Section 53545, the department shall establish and administer a *competitive grant program* to allocate those funds to selected *capital improvement projects that are an integral part of, or necessary to facilitate the development of, a qualifying infill project or a qualifying infill area*.

(c) A qualifying infill project or qualifying infill area for which a capital improvement project grant may be awarded shall meet all of the following conditions:

(1) Be located in a city, county, or city and county, in which the general plan of the city, county, or city and county, *has an adopted housing element* that has been found by the department, pursuant to Section 65585 of the Government Code, to be in 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.

(2) *Include not less than 15 percent of affordable units*, as follows:

(A) For projects that contain both rental and ownership units, units of either or both product types may be included in the calculation of the affordability criteria.

(B) (i) *To the extent included in a project grant application, for the purpose of calculating the percentage of affordable units, the department may consider the entire master development in which the development seeking grant funding is included.*

(ii) Where applicable, an applicant may include a replacement housing plan to ensure that dwelling units housing persons and families of low or moderate income are not removed from the low and moderate income housing market. Residential units to be replaced may not be counted toward meeting the affordability threshold required for eligibility for funding under this section.

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\$240 million has been appropriated for this program for 2007.

Program funds must be allocated through a competitive process.

Funded improvements must be necessary for a development project.

How should necessity be evidenced?

Threshold requirements for both areas and projects:

1. Location in an area with a housing element deemed in compliance by HCD.
2. Inclusion of not less than 15% affordable units.
3. Development at density levels described in housing element law Government Code Section 65583.2.
4. Location in an area designated for mixed-use or residential development pursuant to certain plans.

For area-wide improvements, there must be some sort of enforceable legal requirement in place that ensures the required affordable units are actually completed. What should be the required schedule for building them? No slower than building other units (by the time you complete 100 units, you must have completed 15 affordable ones)? Since the goal is to produce new units, existing affordable units wouldn't count towards the total

HCD may calculate the percentage of affordable units based on an entire master development. Why should master developments be given special treatment? What should we do, if anything, to implement this provision?

What rules, if any, should the program adopt to prevent the loss of existing affordable housing, beyond the requirement that replacement units not count towards the required 15%?

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(C) For the purposes of this subdivision, "affordable unit" means a unit that is made available at an affordable rent, as defined in Section 50053, to a household earning no more than 60 percent of the area median income or at an affordable housing cost, as defined in Section 50052.5, to a household earning no more than 120 percent of the area median income. Rental units shall be subject to a recorded covenant that ensures affordability for at least 55 years. Ownership units shall initially be sold to and occupied by a qualified household, and subject to a recorded covenant that includes either a resale restriction for at least 30 years or equity sharing upon resale.

(D) A qualifying infill project or qualifying infill area for which a disposition and development agreement or other project- or area-specific agreement between the developer and the local agency having jurisdiction over the project has been executed on or before the effective date of the act adding this section, shall be deemed to meet the affordability requirement of this paragraph (2) if the agreement includes affordability covenants that subject the project or area to the production of affordable units for very low, low-, or moderate-income households.

(3) Include average residential 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 a project located in a rural area as defined in Section 50199.21 shall include average residential densities on the parcels to be developed of at least 10 units per acre.

(4) Be located in an area designated for mixed-use or residential development pursuant to one of the following adopted plans:

(A) A general plan adopted pursuant to Section 65300 of the Government Code.

(B) A project area redevelopment plan approved pursuant to Section 33330.

(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.

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Affordable rental units must restrict income to 60% of AMI and rent to 30% of 60% of AMI for 55 years. Affordable ownership units must be initially occupied by households with incomes not exceeding 120% of AMI, and be subject to resale restrictions or equity sharing arrangements.

The statute requires ownership units to be covered by resale restrictions or equity sharing. Should the program set standards for what types of arrangements are acceptable in this regard?

Pre-existing DDAs or similar agreements pre-empt the standard minimum affordability requirement, as long as they include something similar.

Projects and areas must be developed at "housing element--Mullin densities", except rural projects may be developed at 10 units per acre. This requirement is (roughly) 30 units per acre in metropolitan counties and large cities, 20 units per acre in suburban areas (as defined) and 10 or 15 units per acre elsewhere. Information on which categories apply to which cities is available at www.hcd.ca.gov/hpd/hrc/plan/he/ab2348stat04ch724.pdf; HCD plans to post a more detailed listing in the near future.

One issue in applying the density requirement to areas is what land area to include. HCD is thinking that land not zoned for mixed use or residential development should be excluded.

For area applications, to ensure that housing development actually occurs at the required average densities, a legal requirement will have to be in place that prevents development that would cause the area to fall below the required standard. This may be in the form of a minimum density zoning ordinance or recorded covenant or agreement with a public agency.

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(5) For qualifying infill projects or qualifying infill areas located in a redevelopment project area, meet the requirements contained in subdivision (a) of Section 33413.

(d) In its review and ranking of applications for the award of capital improvement project grants, *the department shall rank the affected qualifying infill projects and qualifying infill areas based on the following priorities:*

(1) Project **readiness**, which shall include all of the following:

(A) A demonstration that the project or area development can complete environmental review and secure necessary entitlements from the local jurisdiction within a reasonable period of time following the submittal of a grant application.

(B) A demonstration that the eligible applicant can secure **sufficient funding** commitments derived from sources other than this part for the timely development of a qualifying infill project or development of a qualifying infill area.

(C) A demonstration that the project or area development has **sufficient local support** to achieve the proposed improvement.

(2) The depth and duration of the **affordability** of the housing proposed for a qualifying infill project or qualifying infill area.

(3) The extent to which the **average residential densities** on the parcels to be developed exceed the density standards contained in paragraph (3) of subdivision (c).

(4) The qualifying infill project's or qualifying infill area's **inclusion of, or proximity or accessibility to, a transit station or major transit stop**.

(5) *The proximity of housing to parks, employment or retail centers, schools, or social services.*

(6) The qualifying infill project or qualifying infill area *location's consistency with an adopted regional blueprint plan or other adopted regional growth plan* intended to foster efficient land use.

(e) In allocating funds pursuant to this section, the department, to the maximum extent feasible, shall ensure a **reasonable geographic distribution** of funds.

(f) Funds awarded pursuant to this section shall supplement, not supplant, other available funding.

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Application rating and ranking criteria:

Readiness, based on a demonstration that (A) environmental reviews can be completed and entitlements secured (B) sufficient funding will be available and (C) local support.

For individual development projects, readiness is usually assessed based on the extent to which planning approvals and funding commitments have already been secured. Are there other factors that should be considered?

For areas, how specifically should we evaluate readiness? Since the goal is housing production, it would seem that we should look at the readiness of the housing, as well as the infrastructure. What indicators should we evaluate?

Similarly, the evaluation of funding sufficiency for areas should seemingly include the housing, as well as the infrastructure. How should we do this, especially given current market conditions?

We think local support could be evidenced by a letter from the local legislative body. Are there other relevant measures?

In evaluating affordability, should there be different scales for projects and areas? What should earn maximum points for areas?

In evaluating density, our thought is to award points based on the extent to which densities exceed the minimum requirement, as described above.

Suggestions for defining "major transit stop?"

Evaluating areas would seem rather different than evaluating identified housing development projects. One approach to addressing these differences would be to use two different rating scales, each with somewhat different criteria and criteria weights. It might also make sense to have one funding pot for areas, and another for projects. Thoughts?

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(g) (1) The department shall adopt guidelines for the operation of the grant program, including guidelines to ensure the tax exempt status of the bonds issued pursuant to this part, and may administer the program under those guidelines.

(2) The guidelines shall include provisions for the *reversion of grant awards that are not encumbered within four years of the fiscal year in which an award was made, and for the recapture of grants awarded, but for which development of the related housing units has not progressed in a reasonable period of time from the date of the grant award, as determined by the department.*

(3) The guidelines shall not be subject to the requirements of Chapter 3.5 (commencing with Section 11340) of Division 3 of Title 2 of the Government Code.

(h) For each fiscal year within the duration of the grant program, the department shall include within the report to the Legislature, required by Section 50408, information on its activities relating to the grant program. The report shall include, but is not limited to, the following information:

(1) A summary of the projects that received grants under the program for each fiscal year that grants were awarded.

(2) The description, location, and estimated date of completion for each project that received a grant award under the program.

(3) An update on the status of each project that received a grant award under the program, and the number of housing units created or facilitated by the program.

SEC. 29. Section 53545.14 is added to the Health and Safety Code, to read:

53545.14. (a) Upon appropriation of funds by the Legislature for purposes of implementing paragraph (2) of subdivision (b) of Section 53545, the California Pollution Control Financing Authority, in consultation with the Department of Housing and Community Development, shall administer loans or grants under the California Recycle Underutilized Sites (CALReUSE) program established under Article 9 (commencing with Section 8090) of Division 11 of Title 4 of the California Code of Regulations, for the purpose of brownfield cleanup that promotes infill residential and mixed-used development,

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Since the need for infill infrastructure is widespread, HCD believes program funds should be distributed throughout the urbanized areas of the state, including areas that are likely to not receive substantial amounts from other 1C programs, such as the TOD Housing Program. It is currently contemplating minimum targets for Northern California and Southern California, as well as a separate target for the Central Valley. Something like: 30%, 45%, 20%.

For area applications, how should we avoid supplanting other resources?

What specific deadlines should apply? The state budget act requires 2007 funds to be expended by 6/30/2012, which argues for requiring that specific uses for area applications be firmed up and well on the path to start construction substantially in advance of this date. A shorter fuse is probably appropriate for project applications. Intermediate milestones (e.g. deadlines for completing environmental review of the promised housing) would also seem reasonable.

What recapture provisions are reasonable? Recapture of a pro-rata amount if housing is not under construction in 5 years, with a provision for an extension s if the delay was due to circumstances beyond the applicant's control? (If 100 units are promised and 90 delivered, 10% of the money would be due back.)

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consistent with regional and local land use plans.

(b) For each fiscal year covering the duration of the program, the authority shall include within its report to the Legislature, pursuant to Section 44525.7, information on its activities relating to the program. At a minimum, the report shall include a summary of the projects that receive loans or grants pursuant to this section for each fiscal year loans or grants are awarded. The report shall include the description, location and estimation of completion for each recipient project. The report shall also include an update on the status of each project and the number of infill housing units facilitated by the program.

...

SEC. 38. It is the intent of the Legislature that appropriations for the expenditure of funds deposited in the Regional Planning, Housing, and Infill Incentive Account established under subdivision (b) of Section 53545 of the Health and Safety Code be made to achieve the following policy objectives:

(a) To encourage the development of high density infill housing and mixed-use development for all levels of income at locations near job centers and transit stations, thereby reducing vehicle trips, commute times, vehicle miles traveled, and vehicle emissions.

(b) To invest in established, urban neighborhoods by producing new housing and improving related neighborhood infrastructure, such as city streets, parks, and sewer and utility hookups, cleaning up brownfield sites, and furthering other similar or related purposes.

(c) To provide sustainable communities and affordable housing.

(d) To protect the state's rich agricultural farmland, open spaces, and sensitive habitat.

(e) To promote the reuse and recycling of previously developed and passed over land in urban areas, with a focus on environmentally distressed properties, or what are more commonly known as brownfields.

(f) To reward projects that are consistent with regional and local

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How should the Infill Incentive Grant Program be coordinated with the CALReUSE program? How should it relate to other state programs? HCD was thinking that Infill Infrastructure Grant funds should be freely usable in conjunction with funds from other programs.

How should award amounts be established? Since the goal is to produce housing, one option is \$X per housing unit promised, perhaps adjusted by area or by residential density. To ensure adequate geographic distribution, a cap or series of caps might be appropriate – say \$20 million per qualified area, or \$Y per person for all qualified areas and projects and in a given jurisdiction. To avoid large numbers of small applications, a minimum might also make sense; perhaps \$5 million for an area.

What should be required to evidence the feasibility of housing used to justify area improvements? Some sort of market and development feasibility study?

What should the local match requirement be? Ten percent? More? Any reason for not counting all funds under the control of the locality towards this match (including federal funds they allocate, such as CDBG)?

What else needs to be done to ensure that program funds are targeted to uses most likely to increase housing production?

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planning processes and accomplish any of the following:

- (1) Improve mobility and reduce dependency on single-occupant vehicle trips.
- (2) Accommodate an adequate supply of housing for all income levels.
- (3) Reduce impacts on valuable habitat, productive farmland, and air quality.
- (4) Conserve resources such as energy and water.
- (5) Revitalize existing neighborhoods.

SEC. 39. Of the amount appropriated in Item 2240-101-6069 of Section 2.00 of the Budget Act of 2007, the following allocations shall be made as follows:

(a) Two hundred-forty million dollars (\$240,000,000), shall be made available in the 2007-08 fiscal year for the grant program established in Section 53545.13 of the Health and Safety Code, as added by Section 28 of this act.

(b) Sixty million dollars (\$60,000,000), shall be made available in the 2007-08 fiscal year for the loan and grant program established in Section 53545.14 of the Health and Safety Code, as added by Section 29 of this act.

SEC. 40. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 41. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to make the necessary statutory changes to implement the Budget Act of 2007 at the earliest possible time, it is necessary that this act take effect immediately.

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Referenced Definition of “Capital Assets.”

Government Code Section 16727 Proceeds from the sale of any bonds issued pursuant to this chapter shall be used only for the following purposes:

- (a) The costs of construction or acquisition of capital assets. "Capital assets" mean 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, but these costs may not exceed 10 percent of the bond proceeds net of all issuance costs. "Capital assets" include 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 include equipment with an expected useful life of two years or more. Costs allowable under this section 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.
- (b) To make grants or loans, if the proceeds of the grants or loans are used for the costs of construction or acquisition of capital assets. Bond proceeds may also be used to pay the costs of a state agency for administering the grant or loan program.
- (c) To repay funds borrowed in anticipation of the sale of the bonds, including interest, or to pay interest on the bonds themselves.
- (d) To pay the costs of a state agency with responsibility for administering the bond program. These costs include those incurred by the Treasurer, the Controller, the Department of Finance, and the Public Works Board for staff, operating expenses and equipment, and consultants' costs.
- (e) The costs of the Treasurer's office directly associated with the sale and payment of the bonds, including, but not limited to, underwriting discounts, costs of printing, bond counsel, registration, and fees of trustees.

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<p>Nothing in this section is intended to prohibit the investment of bond proceeds or the use of proceeds of those investments in any manner authorized by law.</p>	
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