Infill Infrastructure Grant Program –

Qualifying Infill Projects

Public Comment Draft Guidelines

AB 434 (Chapter 192, Statutes 2020)

To ease in review, language identified in red text throughout this document represents text that is consistent across all multifamily funding programs subject to AB 434.

Please refer to the Department’s [AB 434 website](https://www.hcd.ca.gov/grants-funding/ab434.shtml) for copies of all AB 434 Designated Program draft guidelines and applicable appendices

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Infill Infrastructure Grant Program – Qualifying Infill Projects

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Article 1. General

Section 100. Purpose and Scope.

The Infill Infrastructure Grant Program’s primary objective is to promote infill housing development by providing financial assistance for Capital Improvement Projects that are an integral part of, or necessary to facilitate the development of, a Qualifying Infill Project.

Under the Program, grants are available as gap funding for infrastructure improvements necessary for specific residential or mixed-use infill development projects. Qualifying Infill Projects must have either been previously developed or be largely surrounded by development. 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, site preparation or demolition, sidewalks, and streetscape improvements.

Funds will be allocated through a competitive process, based on the merits of the individual application. The application selection criteria includes project readiness, affordability, housing density, access to transit, proximity to amenities, and consistency with regional plans.

1. These guidelines implement and interpret Chapter 2 (commencing with Section 53545) of Part 12 of Division 31 of the Health and Safety Code. Specifically, Health and Safety Code Section 53545.13 establishes the Infill Incentive Grant Program of 2007, hereinafter referred to as the Infill Infrastructure Grant Program (IIG or Program), administered by the California Department of Housing and Community Development (Department).
   1. These guidelines apply only to Qualifying Infill Projects. Capital Improvement Projects associated with Qualifying Infill Areas will be governed under a separate set of program guidelines to be issued at a later date.
2. Nothing in these guidelines is intended to be, nor should be, interpreted to amend or repeal rules, regulations or requirements set forth in prior versions of IIG guidelines or their amendments; these guidelines shall have no retroactive application. These guidelines shall, however, supplant and replace all prior versions of guidelines for the purposes of applying to the funding offered subsequent to their publication.
3. These guidelines implement and interpret AB 434 (Chapter 192, Statutes 2020), which amends, repeals and adds HSC Section 50675.1 and 50675.7, along with various statutes related to the Designated Programs. AB 434 requires the Department to harmonize the Designated Programs with MHP in four (4) respects: The Department is to make Designated Program funds available at the same time as it makes any MHP funds available; it is to rate and rank Designated Program applications in a manner consistent with MHP applications; it is to administer Designated Program funds consistent with MHP; and, to the extent applicable, it is to make the terms of any Designated Program loan consistent with MHP loan terms.

Section 101. Uniform Multifamily Regulations (UMRs).

1. The Uniform Multifamily Regulations (UMRs) (Cal. Code Regs., tit. 25, § 8300 et seq), effective November 15, 2017, and as subsequently amended, are hereby incorporated by reference.
2. In the event of a conflict between the provisions of the UMRs and these guidelines, the provisions of these guidelines shall prevail.

Section 102. Definitions.

All capitalized terms used throughout these guidelines which are not defined below shall, unless their context suggests otherwise, be given the same meanings of terms as defined in the Multifamily Housing Program Guidelines (see Appendix B for a list of these defined terms) or as ascribed in the UMRs (Chapter 7, Subchapter 19, Section 8301).

In the event of a conflict between the following definitions and those cited above, the following definitions prevail for the purposes of these guidelines. The defined terms will be capitalized as they appear in the guideline text. References to sections herein refer to sections of these guidelines unless otherwise noted.

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

1. "Affordable Unit" means a unit that is made available at an affordable rent, as defined in Health and Safety Code section 50053, to a household earning no more than 60 percent of the Area Median Income (AMI) or, for ownership projects, at an affordable housing cost, as defined in Health and Safety Code section 50052.5, to a household earning no more than 120 percent of the AMI. Rental units shall be subject to a recorded covenant ensuring affordability for a duration of at least 55 years. Ownership units shall initially be sold to and occupied by a qualified household and shall be subject to a recorded covenant that includes either a resale restriction for at least 30 years or equity sharing upon resale.
2. “Capital Asset" means a tangible physical property with an expected useful life of 15 years or more. Capital Asset also means a tangible physical property with an expected useful life of 10 to15 years for costs not to exceed 10 percent of the Program grant. Capital Asset includes major maintenance, reconstruction, demolition for purposes of reconstruction of facilities, and retrofitting work that is ordinarily done no more often than once every 5 to 15 years or expenditures that continue or enhance the useful life of the Capital Asset. "Capital Asset" also includes equipment with an expected useful life of two years or more. Costs allowable under this definition include costs incidentally but directly related to construction or acquisition, including, but not limited to, planning, engineering, construction management, architectural, and other design work, environmental impact reports and assessments, required mitigation expenses, appraisals, legal expenses, site acquisitions, and necessary easements.

1. "Capital Improvement Project" or “CIP” means the construction, rehabilitation (as that term is defined in 25 CCR § 7301(m)), demolition, relocation, preservation, acquisition, or other physical improvement of a Capital Asset that is an integral part of, or necessary to facilitate the development of, a Qualifying Infill Project. Capital Improvement Projects that may be funded under the Program include, but are not limited to, those described in Section 200.
2. “Employment Center” means 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. “Local Support” means support of local public agencies
4. “Major Transit Stop” means a site containing any of the following: (1) An existing rail or bus rapid transit station. (2) A ferry terminal served by either a bus or rail transit service. (3) The intersection of two or more major bus routes with a frequency of service interval of 15 minutes or less during peak hours. Peak hours are limited to the time between 7 a.m. to 10 a.m., inclusive, and 3 p.m. to 7 p.m., inclusive, Monday through Friday, or the alternative peak hours designated for the transportation corridor by the transit agency. This level of service must have been publicly posted by the provider at some point between January 2020 and the time of application.
5. “Net Density” means the total number of dwelling units per acre of land to be developed for residential or mixed use, excluding allowed deductible areas. Allowed deductible areas are public dedications of land which are for public streets, public sidewalks, public Open Space, and public drainage facilities. Non-allowed deductible areas include utility easements, setbacks, private drives and walkways, general landscaping, common areas and facilities, off street parking, and traditional drainage facilities exclusive to a development project. Mitigations required for development will not be included in the allowed deductible areas.
6. “Nondiscretionary Local Approval Process” means a process for development approval involving little or no personal judgment by the public official as to the wisdom or manner of carrying out the project. The public official merely ensures that the proposed development meets all the objective zoning standards, objective subdivision standards, and objective design review standards in effect at the time that the application is submitted to the local government, but uses no special discretion or judgment in reaching a decision.
7. “Qualifying Infill Project” or “QIP” means a residential or mixed-use residential development project designated in the Program application that is 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. 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.
8. “Recipient” means the eligible applicant as defined in Section 201 of these guidelines receiving a commitment of Program funds for an approved Capital Improvement Project.
9. “Retail Center” means a downtown area or recognized neighborhood or regional shopping mall.
10. “Rural Area” has the meaning set forth in Health and Safety Code section 50199.21.
11. “Structured Parking” means a structure in which vehicle parking is accommodated on multiple stories; a vehicle parking area that is underneath all or part of any story of a structure; or a vehicle parking area that is not underneath a structure, but is entirely covered, and has a parking surface at least eight feet below grade. Structured Parking does not include surface parking, residential garages, or carports, including solar carports.
12. “Transit Priority Area” means an area within one-half mile of a Major Transit Stop that is existing or planned, if the planned stop is scheduled to be completed within the planning horizon included in a transportation improvement program adopted pursuant to Title 23 of the Code of Federal Regulations section 450.216 or 450.322.
13. “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.
14. “Urban Uses" means any residential, commercial, industrial, public institutional, transit or transportation passenger facility, or retail use, or any combination of those uses.
15. “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 public sewer and water systems.
16. “Walkable Route” shall mean a route which, after completion of the proposed Qualifying infill 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 adequate lighting.
17. “Workforce Housing Opportunity Zone” or “Zone” means an area of contiguous or noncontiguous parcels identified on a city or county’s inventory of land suitable for residential development pursuant to paragraph (3) of subdivision (a) of Government Code Section 65583 established pursuant to Section 65621.

Article 2. Administration of Funds.

Section 200. Eligible Capital Improvement Projects.

1. To be eligible for funding, a Capital Improvement Project must be an integral part of, or necessary to facilitate the development, of the Qualifying Infill Project(s) identified in the application.
   1. To be eligible for funding, all applications must include a Qualifying Infill Project.
2. The Qualifying Infill Project for which a Capital Improvement Project grant may be awarded must meet all of the following conditions:
3. Meet the definition of a “Qualified Infill Project” under Section 102.
4. Include not less than 15 percent of affordable units to be developed in the Qualifying Infill Project as Affordable Units, as follows.
5. For Qualifying Infill 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.
6. To the extent included in a Capital Improvement Project grant application, for the purpose of calculating the percentage of Affordable Units, the Department may consider the entire master development in which the development seeking grant funding is included.
7. A Qualifying Infill Project for which a disposition and development agreement or other project or area-specific agreement between the Sponsor and the local agency having jurisdiction over the project has been 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 to the production of Affordable Units for Very Low-, Lower- or Moderate-Income households.
8. Include Net Densities on the parcels to be developed that are equal to or greater than the densities described in the Government Code section 65583.2, subdivision (c)(3)(B), except that a Qualifying Infill Project located in a Rural Area as defined in Health and Safety Code Section 50199.21 shall include Net Densities on the parcels to be developed of at least 10 units per acre.
9. Be located in an area designated for mixed-use or residential development pursuant to one of the following adopted plans:
10. A general plan adopted pursuant to Government Code section 65300.
11. A regional sustainable communities strategy or alternative planning strategy approved pursuant to Government Code section 65080.
12. A project area redevelopment plan adopted pursuant to the Health and Safety Code section 33330.
13. 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 the Government Code section 65060.7.
14. The Eligible Applicant must identify a mechanism, such as a minimum density ordinance or a recorded, binding covenant, acceptable to the Department to reliably ensure that future development will occur at an overall Net Density equaling or exceeding that set forth in Section 200(b)(4). This mechanism must be in effect and legally enforceable prior to the initial disbursement of Program funds.
15. Eligible Applicants shall designate the proposed residential units in the Qualifying Infill Project that the Eligible Applicant intends to utilize for the purpose of establishing the maximum Program grant amount pursuant to Section 205, and for the purpose of rating applications pursuant to Sections 400 and 401. Any such designated units must be utilized for both purposes.
16. The application must demonstrate that the percentage of Affordable Units, and units restricted to other income limits and rents as designated for the purpose of determining the maximum Program grant amount in Section 205 and for rating purposes pursuant to Section 402, shall be maintained or exceeded through the completion of each residential development proposed in the application. The Department may modify the requirement set forth in the previous sentence to conform to a similar local public agency requirement, provided that the Department determines that the local requirement will reliably result in completion of the required Affordable Units as set forth in Section 403.
17. At the time of the application due date, the construction work of the Capital Improvement Project has not commenced, except for emergency repairs to existing structures required to eliminate hazards or threats to health and safety.
18. Projects proposed by Tribal Entities must meet the following requirements:
    1. Projects satisfy one of the following:
       1. Located in Indian country as defined by 18 USC 1151 or located on fee land; and
       2. Occupancy will be legally limited to tribal households, except that up to 20% of Low-Income Units may serve non-tribal households if required by the HOME Program.
    2. The applicant meets the following conditions of award funding (which conditions are not, however, conditions to engaging in the competitive award process) as and to the extent applicable and set forth in a Standard Agreement:
       1. BIA Consent. The Bureau of Indian Affairs (BIA) has consented to Applicant’s execution and recordation (as applicable) of all Department-required documents that are subject to 25 CFR sec. 152.34 or 25 CFR sec. 162.12, prior to award disbursement.
       2. Personal and Subject Matter Jurisdiction. Personal and subject matter jurisdiction in regard to the Standard Agreement, Project, or any matters arising from either of them is in state court and the Department has received any legal instruments or waivers, all duly approved and executed, as are or may be legally necessary and effective to provide for such personal and subject matter jurisdiction in state court.
       3. Title Insurance. The Department has received title insurance for the property underlying the Project that is satisfactory to the Department. Notwithstanding the foregoing sentence, upon a showing of good cause, for Applicants unable to provide a conventional title insurance policy satisfactory to the Department, this condition may be satisfied by a title status report issued by the BIA Land Title and Records Office and pursuant to a title opinion letter issued for the benefit of the Department but paid for by the Applicant.
       4. Recordation Requirements. Where recordation of instruments is a condition of award funding or otherwise required under or pursuant to the Standard Agreement, the subject instrument is recorded with the Land Titles and Records Office at the BIA or in the appropriate official records of the County in which the Project property is located, as may be applicable.
19. Multiple Department Funding Sources

Use of multiple Department funding sources on the same units utilized in the calculation

of the Capital Improvement Project grant amount is permitted, subject to the following limitation:

* 1. No more than $35,000,000 in Department Funding Sources may be used on a single project. Per unit loan limits shall be determined in a NOFA. Total Department funding, including IIG, shall not exceed 75% of the total development cost. In a SuperNOFA, each Sponsor is limited to no more than $70,000,000.
  2. Funding limits set forth in subsection (1) shall not include Department funds awarded for purposes other than capital improvements, such as loans or grants for non-housing related infrastructure, transit amenities, programs, or rental and operating subsidies.
  3. “Department Funding Sources” shall mean loan or grant funds awarded for permanent funding of multifamily development costs (which shall not include funds specifically designated for capitalized operating or operating subsidy reserves) under the following programs:
     1. Supportive Housing Multifamily Housing Program;
     2. Multifamily Housing Program;
     3. Veterans Housing and Homelessness Prevention program;
     4. No Place Like Home Program, including funds awarded either by the Department or an Alternative Process County, but not grants or loans for capitalized operating subsidy reserves;
     5. Affordable Housing and Sustainable Communities (AHSC) Program - Affordable Housing Development loans, but not grants for Housing Related Infrastructure, Sustainable Transportation Infrastructure, Transportation Related Amenities, or Program Costs, all as defined in the AHSC program guidelines;
     6. Infill Infrastructure Grant Program – grant funds used for site work and residential structured parking (as defined in the IIG guidelines);
     7. Transit Oriented Development Program - rental housing development loans, but not grants for offsite infrastructure;
     8. Joe Serna, Jr. Farmworker Housing Grant Program;
     9. Permanent Local Housing Allocation – Competitive program
     10. Housing for a Healthy California program, including funds awarded either by the Department or a county, but not grants for operating reserves or rental assistance;
     11. Homekey;
     12. Home Investment Partnerships Program;
     13. Community Development Block Grant Program; and
     14. National Housing Trust Fund Program.

“Department Funding Sources” do not include: offsite infrastructure funds; or existing loans or grants under any Department funding source listed above that are at least 14 years old and will be assumed or recast as part of an acquisition and Rehabilitation project.

1. Once a project is awarded Department funds, the Sponsor/Awardee is acknowledging the project as submitted and approved is the project that is to be funded and built. Any bifurcation would make that award null and void, as the awarded project is no longer feasible as originally submitted and  awarded funds are unable to be assumed or assigned.

Section 201. Eligible Applicant.

“Eligible Applicant” means one of, or any combination of, the following:

* 1. A nonprofit or for-profit developer of a Qualifying Infill Project;
  2. Tribally Designated Housing Entity that is the Sponsor of a Qualifying Infill Project.
  3. Except as abrogated below in this subdivision, Sponsor shall demonstrate that it has successfully developed, operated, and owned at least four (4) affordable rental housing developments of equivalent size, scale, and occupancy. Sponsor shall have satisfied this experience requirement at the time of its application for the funds.

1. Notwithstanding the foregoing, and solely for the purpose of applying to the Emerging Developer set-aside, an Emerging Developer shall qualify on its own as a Sponsor so long as the Emerging Developer meets the experience requirements set forth in MHP Guidelines Section 7301.
2. Notwithstanding the foregoing, and solely for the purpose of applying to the Community-Based Developer set-aside, a Community-Based Developer shall qualify on its own as a Sponsor so long as the Community-Based Developer meets the experience requirements set forth in MHP Guidelines Section 7301 definition above, as well as satisfies the application requirements set forth in Section 401 hereof.

1. Tribal Entities, Emerging Developers, and New Community-Based Developers may satisfy this experience requirement by contracting with an entity that meets the requirements of this subdivision (d). Such contract or partnership agreement must be fully executed at the time of application submittal, and it must remain in effect until permanent loan closing and the issuance of any required tax forms.
2. If a joint venture Sponsor relies upon the experience of one of the members to meet the Sponsor eligibility requirements, the joint venture Sponsor must meet the following requirements:
   * 1. The partner with experience must document that experience in the application as required by the NOFA.
     2. The partner with experience must retain a controlling interest in the joint venture for at least seven (7) consecutive years from the date of full occupancy of the Rental Housing Development. Any transfer of this interest requires the Department’s advance written approval.
     3. The partner with experience must perform a substantial management role in the joint venture for at least seven (7) consecutive years from the date of full occupancy of the Rental Housing Development. Such role shall include the substantial management duties set forth at UMR Section 8313.2.

* + 1. The partnership agreement must, for the duration of the joint venture Sponsor’s partnership, do the following:
       1. The inexperienced partner must complete training pursuant to TCAC Regulations, Title 4 CCR, Division 17, Chapter 1, Section 10325(c)(1)
       2. Allocate a share of developer fee, Distributions, and net sales proceeds to the partner without experience that is no less than 50 percent of the total; and
       3. Provide the partner without experience with an option to purchase the Rental Housing Development.

1. Sponsor shall demonstrate capacity to acquire, develop, and own affordable rental housing. For purposes of this subdivision, an entity has “capacity” if it has adequate staff, capital, assets, and other resources to efficiently meet the operational needs of the Rental Housing Development; to maintain the Fiscal Integrity of the Rental Housing Development; and to satisfy all legal requirements and obligations in connection with the Rental Housing Development. Evidence of capacity must be reasonably acceptable to the Department in form and substance. Sponsor shall satisfactorily demonstrate capacity at the time of its application for the funds.
2. Sponsor shall maintain direct and continuing control of the Rental Housing Development. Alternatively, if the Department’s funding disbursement is structured with or through a special purpose entity, the Sponsor shall exercise direct and continuing control over such special purpose entity in accordance with UMR Section 8313.2 and throughout the full term of the Department’s use restriction on the Rental Housing Development. Sponsor shall certify that it will abide by this control requirement at the time of its application for the funds.

Section 202. Threshold Requirements.

Applications shall be eligible for an award of funds as long as the application demonstrates that all the following threshold requirements have been met:

1. The applicant is an Eligible Applicant pursuant to Section 201;
2. The application involves an Eligible Capital Improvement Project pursuant to Section 200;
3. All proposed uses of Program funds are eligible pursuant to Section 203;
4. The application is complete pursuant to Sections 400 and 401;
5. Achieve a minimum point score of 110 points for universal scoring criteria as outlined in Section 403.
6. The Qualifying Infill Project(s), as proposed in the application, is financially feasible as evidenced by documentation such as, but not limited to, Enforceable Funding Commitments, market study, project proforma, sources and uses statement, or other feasibility documentation that is standard industry practice for the type of proposed housing development.
7. The Qualifying Infill Project will maintain Fiscal Integrity consistent with proposed Rents in the Assisted Units and is feasible pursuant to the underwriting standards in UMR Section 8310;
8. The Qualifying Infill Project and Capital Improvement Project sites is free from severe adverse environmental conditions, such as the presence of toxic waste that is economically infeasible to remove or cannot be mitigated;
9. The Qualifying Infill Project site is reasonably accessible to public transportation, shopping, medical services, recreation, schools, and employment in relation to the needs of the Qualifying Infill Project tenants.
10. Qualifying Infill Projects involving new construction, acquisition and substantial Rehabilitation, or conversion of nonresidential structures to residential dwelling units must be physically capable of accommodating broadband service with at least a speed of 25 megabits per second for downloading and 3 megabits per second for uploading (25/3). Internet service and its ongoing fee are not required.
11. The Qualifying Infill Project complies with the restrictions on demolition as set forth in UMR Section 8302; and
12. The Qualifying Infill Project and Capital Improvement Project comply with the site control requirements as set forth in UMR Section 8303 with the exception that the Recipient/Sponsor shall maintain site control through the term of the proposed award, as stated in the NOFA, and with the option to extend.

Where site control is in the name of another entity, the Sponsor shall provide documentation, in form and substance reasonably satisfactory to the Department, which clearly demonstrates that the Sponsor has some form of right to acquire or lease the project property (e.g, the entity’s organizational documents).

* 1. Additionally, the following shall apply to Capital Improvement Projects:
     1. A right of way or easement, which is either perpetual, or of sufficient duration to meet Program requirements, and which allows the Recipient and/or Sponsor to access, improve, occupy, use, maintain, repair, and alter the property underlying the right of way or easement;
     2. An executed encroachment permit for construction of improvements or facilities within the public right of way or on public land;

1. For Qualifying Infill Projects and Capital Improvement Project developed in Indian country, the following exceptions apply:
2. Where site control is a ground lease, the lease agreement between the Tribal Entity and the Sponsor is for a period not less than 50 years; and
3. An attorney’s opinion regarding chain of title and current title status is acceptable in lieu of a title report.

Section 203. Eligible Use of Funds.

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

1. Funds shall only be used for capital asset related expenses as required by section 16727 of the Government Code.
2. Eligible costs include the construction, rehabilitation, demolition, relocation, preservation, acquisition, or other physical improvements of the following:
3. The creation, development, or rehabilitation of Parks or Open Space.
4. Water, sewer, or other utility service improvements (including internet infrastructure), including relocation of such improvements.
5. Street, road, and bridge construction and improvement.
6. Structured Parking, including:
7. Structured Parking spaces that are required replacement of Transit Station parking spaces, or public Structured Parking required as a condition of approval for the Qualifying Infill Project within one-half mile of a Major Transit Stop or Transit Station, not to exceed $50,000 per space.
8. Residential Structured Parking and mechanical parking lifts. The minimum residential per unit parking spaces in Structured Parking, as required by local land-use entitlement approval, not to exceed one parking space per residential unit, and not to exceed $50,000 per permitted space.
9. Transit linkages and facilities, including, but not limited to, related access plazas or pathways, or bus and transit shelters.
10. Facilities that support pedestrian or bicycle transit.
11. Traffic mitigation measures.
12. Site clearance, grading, preparation, and demolition necessary for the development of the Capital Improvement Project.
13. Sidewalk or streetscape improvements, including, but not limited to, the reconstruction or resurfacing of sidewalks and streets or the installation of lighting, signage, or other related amenities, including shade structures, seating, landscaping, streetscaping, and public safety improvements.
14. Storm drains, stormwater detention basins, culverts, and similar drainage features.
15. Required environmental remediation necessary for the development of the Capital Improvement Project or Qualifying Infill Project, where the cost of the remediation does not exceed 50 percent of the Program grant amount.
16. Site acquisition or control for the Capital Improvement Project including, but not limited to, easements and rights of way. Such costs must be deemed reasonable and demonstrated by documentation that may include appraisals, purchase contracts, or any other documentation as determined by the Department.
17. Soft costs such as those incidentally but directly related to construction or other pre-development components including, but not limited to, planning, engineering, construction management, architectural, and other design work, required mitigation expenses such as mitigation design or testing, appraisals, legal expenses, and necessary easements. Soft costs shall not exceed 10 percent of costs associated with the funding request for the Capital Improvement Project.
18. Other Capital Asset costs approved by the Department and required as a condition of local approval for the Capital Improvement Project.
19. Impact fees required by local ordinance are eligible for Program funding only if used for the identified Capital Improvement Project. Funded impact fees may not exceed 5 percent of the Program award.
20. The following costs are not eligible:
21. Developer fees or profit.
22. Costs of site acquisition for housing and mixed-use structural improvements.
23. Costs of housing or mixed-use structures.
24. Soft costs related to ineligible costs.
25. In-lieu fees for local inclusionary programs.

Section 204. Cost Limitations.

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

Section 205. Grant terms and limit.

1. The total maximum grant amount shall be established by the number of units in the Qualifying Infill Project the bedroom count of these units, and the density and affordability of the housing to be developed. Replacement housing units may be included in the calculation of the total maximum grant amount. The Department shall publish a table listing per unit grant limits for each NOFA based on these factors. The total eligible grant amount shall be based upon the lesser of the amount necessary to fund the Capital Improvement Project or the maximum amount calculated from the table published by the Department.
2. Minimum and maximum award amounts are identified in the NOFA.
3. Where the Qualifying Infill Project is receiving low-income housing tax credits, the Recipient may provide Program funds to the Sponsor of the Qualifying Infill Project in the form of a zero percent deferred payment loan, with a term of at least 55 years. The loan may be secured by a deed of trust, which may be recorded with the local county recorder’s office, provided the beneficiary of the loan shall not under any circumstances exercise any remedy, including, without limitation, foreclosure, under the deed of trust without the prior written consent of the Department, in its sole and absolute discretion. The loan may not be sold, assigned, assumed, conveyed, or transferred to any third party without prior written Department approval in its sole and absolute discretion. For Qualifying Infill Projects assisted by other Department funding programs, repayment of the loan between the Recipient and the Sponsor shall be limited to (1) no repayments to the Recipient until the maturity date or (2) repayment only from distributions from the Qualifying Infill Project within the meaning of 25 CCR section 8301(i). The Recipient shall be responsible for all aspects of establishing and servicing the loan. The provisions governing the loan shall be entirely consistent with these Guidelines and all documents required by the Department with respect to the use and disbursement of Program funds. All documents governing the loan between the Recipient and the Sponsor shall contain all the terms and conditions set forth in this subdivision and shall be subject to the review and approval of the Department prior to making the loan. This subdivision shall apply to any Qualifying Infill Project receiving low-income housing tax credits regardless of the date of the Program award.
4. Conditions precedent to the initial disbursement of Program funds shall include receipt of all required public agency entitlements and all required funding commitments for any proposed Qualifying Infill Project supported by the Capital Improvement Project.
5. Grant funds will be disbursed as progress payments for approved eligible costs incurred subject to the requirements of these Guidelines.
6. Where approval by a local public works department, or an entity with equivalent jurisdiction, is required for the Capital Improvement Project, the Recipient must submit, prior to the disbursement of grant funds, a statement or other documentation acceptable to the Department indicating that the Capital Improvement Project is consistent with all applicable policies and plans enforced or implemented by that department or entity.
7. The Department shall record an affordability covenant against the fee estate. The affordability covenant shall be subject only to those liens, encumbrances and other matters of record approved by the Department pursuant to UMR sections 8310(f) and 8315.

Article 3. General Requirements

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

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

1. Fair Housing Act

The Sponsor shall comply with all state and federal fair housing laws. At the Department’s election, Sponsor must submit an attorney’s opinion acceptable to the Department describing the intended occupancy restrictions and how they comply with the California Unruh Civil Rights Act (Civ. Code, §§ 51 - 53), the California Fair Employment and Housing Act (FEHA) (GC, § 12900 et seq.) and the FEHA regulations, Title 2, CCR Sections 12005-12271. Occupancy restrictions must be carried out in a manner which does not violate state or federal fair housing laws.

1. Americans with Disabilities Act and Accessibility

The Sponsor shall ensure compliance with all applicable state and federal building codes and accessibility laws and standards. In addition, the Sponsor shall ensure that the project meets the following requirements:

* 1. New Construction projects: All new construction projects shall adhere to the accessibility requirements set forth in Chapter 11A and 11B of the California Building Code (CBC).
  2. All new construction projects must provide a minimum of fifteen percent (15%) of the units with features accessible to persons with mobility disabilities plus a minimum of ten percent (10%) of the units with features accessible to persons with hearing or vision disabilities.
  3. Accessible Units: All new and existing projects with fully accessible units for occupancy by persons with mobility impairments or hearing, vision or other sensory impairments shall provide a preference for those units as follows:
     1. First, to a current occupant of another unit of the same project having a disability requiring the accessibility features of the vacant unit and occupying a unit not having such features, or if no such occupant exists, then
     2. Second, to an eligible qualified applicant on the waiting list having a disability requiring the accessibility features of the vacant unit.

1. When offering an accessible unit to an applicant not having a disability requiring the accessibility features of the unit, the owner or manager shall require the applicant to agree (and may incorporate this agreement in the lease) to move to a non-accessible unit when available.
2. Owners and managers shall adopt suitable means to assure that information regarding the availability of accessible units reaches eligible individuals with a disability, and shall take reasonable nondiscriminatory steps to maximize the utilization of such units by eligible individuals whose disability requires the accessibility features of the particular unit.
3. Violence Against Women Act

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

1. Pet Friendly Housing Act

Sponsor shall authorize residents of the housing development to own or otherwise maintain one or more common household pets pursuant to the Pet Friendly Housing Act of 2017 (California Health & Safety Code, Section 50466).

1. California State Prevailing Wage Law

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

Although the use of Program funds does not require compliance with the federal Davis-Bacon Act, other funding sources may require compliance with the federal Davis-Bacon Act 44.

## **Section 301. Relocation Requirements.**

The Sponsor of a Qualifying Infill Project resulting in displacement of residential tenants shall be solely responsible for providing the assistance and benefits set forth in this section and in applicable state and federal law and shall agree to indemnify and hold harmless the Department from any liabilities or claims for relocation-related costs.

1. All persons, businesses or farm operations that are displaced as a direct result of the development of a Qualifying Infill Project or Capital Improvement Project shall be entitled to relocation benefits and assistance as provided in Title 1, GC, Division 7, Chapter 16, commencing at § 7260, and Title 25 CCR, Subchapter 1, Chapter 6, commencing at Section 6000. Displaced tenants who are not replaced with Eligible Households under this Program shall be provided relocation benefits and assistance from funds other than Program funds.
2. The Sponsor shall prepare or update a relocation plan in conformance with the provisions of Title 25 CCR, Section 6038. The relocation plan shall be subject to the review and approval by the Department prior to the disbursement of Program funds and prior to actual displacement of persons, businesses, or farm operations.
3. All Eligible Households who are temporarily displaced as a direct result of the development of the Qualifying Infill Project or Capital Improvement Project shall be entitled, upon initial occupancy of the Rental Housing Development, to occupy Assisted Units meeting the tenant occupancy standards set forth in UMR Section 8305.
4. All ineligible Households who are temporarily displaced as a direct result of the development of the Qualifying Infill Project or Capital Improvement Project shall be entitled, upon initial occupancy of the Rental Housing Development, to occupy any available non-Assisted Units for which they qualify.
5. Notwithstanding the preceding subparagraphs, tenants who are notified in writing prior to their occupancy of an existing Unit that the Unit may be demolished as a result of funding provided under the Program shall not be eligible for relocation benefits and assistance under this section. The form of any notices used for this purpose shall be subject to Department approval.

Article 4. Application Requirements

Section 400. Application Process.

1. The Department shall periodically issue a NOFA that specifies, among other things, the amount of funds available, application requirements, the allocation of rating points, minimum eligibility threshold point scores, the deadline for submittal of applications, the schedule for rating and ranking applications and awarding funds, and the general terms and conditions of funding commitments. A NOFA may declare as ineligible those project applications for which the Department has issued, or concurrently will issue, a special NOFA pursuant to subsection (d)(4), below. Applications selected for funding shall be approved at amounts, terms, and conditions specified by the Department. For each project selected for funding, the Department shall issue an award letter and standard agreement. With respect to any NOFA involving MHP funding and funding from one or more Designated Programs, the Department may require Applicants to specify all sources and amounts of funding for which the Applicant is applying. This requirement may be set forth in either the NOFA or the application.
2. Substituting previously awarded Department funds is prohibited, except as provided herein. Applicants seeking to substitute previously awarded funds must request withdrawal of their prior award in writing and provide reasonable justification that the substitution is necessary to ensure project feasibility. Substitutions based solely upon Recipient/Sponsor preference or convenience will not be permitted. Department approval of the withdrawal is required prior to the application due date without assurance of receiving a new award. This prohibition applies to funds awarded under any Department program, including a prior IIG award.
3. Applications for funding while a separate, concurrent application is pending shall not be considered. For example, if a Sponsor has submitted an Affordable Housing Sustainable Communities (AHSC) application prior to the MHP application deadline, the AHSC application is under review, the AHSC application does not include funding available under the applicable MHP NOFA and the MHP NOFA application does not include AHSC funding, the application will be deemed ineligible. Concurrent applications proposing the same Department funding sources are permitted. This paragraph is not applicable to or intended to prevent an application for multiple Department Program funds available under a single NOFA as contemplated by AB 434.
4. In order to implement goals and purposes of the Program, the Department may adopt measures to direct funding awards to designated project types including, but not limited to, Rural Area projects, projects located in areas needing additional funding to achieve a reasonable geographic distribution of Program funds, projects preserving continued affordability, and projects with specified funding characteristics. These measures may include, but are not limited to:
   1. Issuing a special NOFA for designated project types.
   2. Awarding bonus points within a particular NOFA to designated project types.
   3. Reserving a portion of funds in the NOFA for designated project types.
   4. Notwithstanding anything in these guidelines to the contrary, a special NOFA issued pursuant to this subsection may establish an over-the-counter application process, meaning the Department continuously accepts and rates applications according to minimum threshold criteria published in a NOFA for the process, and makes awards to applicaitons that meet or exceed these criteria until the funding available for the process is exhausted. At a minimum, a special NOFA shall include a description of the application process and funding conditions, shall require compliance with Section 202, and shall establish minimum funding threshold criteria based on the rating criteria set forth in Section 402; and
5. Applications selected for funding shall be approved subject to conditions specified by the Department.
6. The Department may adjust these procedures as follows:
   1. It may elect to not evaluate compliance with some or all eligibility requirements for applications that are not within a fundable range, as indicated by a preliminary point scoring.
7. Applications will be reviewed, and negative points assessed, consistent with the Department’s negative points policy.

## **Section 401. Application Content and Application Eligibility Requirements.**

1. Application shall be made on a form(s) made available by the Department, without modification, requesting the information deemed necessary by the Department to evaluate compliance with these guidelines and all applicable statutes, regulations, and similar rules. Without limiting the generality of the foregoing, with respect to any NOFA involving funding from one or more Designated Programs, the application may require the Applicant(s) to specify all sources and amounts of funding for which they are applying.
2. An application shall be deemed complete when:
   1. The application meets all threshold requirements, as set forth in Section 202, the NOFA and the application.
   2. The application includes authorizing resolutions of the governing boards of both the Sponsor and a co-Sponsor, except where the Sponsor(s) are individuals.
   3. The Department is able to review the application and assess the proposed project’s feasibility pursuant to UMR Section 8310.
   4. Pursuant to Sections 400 and 401, applications shall be evaluated based solely upon the contents of the application. If documents required for scoring are not included, the application will not be deemed incomplete; however, failure to submit necessary documents, as set forth in the NOFA or application, may adversely affect the score of the application. Information or documents received after the application submission deadline will not be considered.
3. Applications shall be evaluated for compliance with the threshold and eligibility requirements of these Guidelines, and applicable statutes, and scored based on the application selection criteria listed in Section 402 of these Guidelines. The applications with the highest number of points shall be selected for funding, provided that they meet all threshold and eligibility requirements and achieve specified minimum scores as identified in the NOFA.
4. For Applicants applying as Community-Based Developers, the entity must demonstrate in their application that they have community knowledge, commitment to long-term community investment, and population-specific cultural competency, all through a combination of the following: receipt of grant funds for services within the relevant neighborhood or community, cultural and linguistic competency on staff, a record of hiring from the community, and membership in or recruitment from a local Urban League (or substantially equivalent) organization. The sufficiency of the foregoing demonstration shall be evaluated in the reasonable discretion of the Department. The entity shall be allowed to define their served community within reason, for example by specifying a neighborhood geography of a specific number of square miles within the location of their central office, which area should include the proposed project.

Section 402. Application Scoring and Selection – See Consolidated Scoring Appendix.

**For the purposes of the Draft Program Guidelines, all scoring criteria have been pulled out and placed in the Consolidated Scoring Appendix. This appendix details the scoring criteria appliable to all programs subject to AB 434. Additional detail on the rating and ranking process is also included in the stakeholder memo.**

1. Any reference outside of these Guidelines and Appendix, including references in the guidelines or regulations for any Designated Program, to the ranking and rating or the administration of funds on a manner consistent with MHP shall not be interpreted as authorizing funding criteria or requirements that conflict with those approved by the voters through a statewide initiative or referendum.

Section 403. Performance Deadlines.

1. Program grant funds used for the completion of the Capital Improvement Project must be disbursed in accordance with the deadlines specified in the NOFA and Standard Agreement. The Recipient must provide final disbursement requests by the disbursement date specified in the NOFA and Standard Agreement.
   1. An extension of these performance requirements, if determined to be necessary by the Department, will be specified in the NOFA.
2. Additionally, the Qualifying Infill Project used as the basis for calculating the Capital Improvement Project grant amount in the application must meet the following:
   1. All permanent financing commitments shall be secured within 24 months of any award of Program funds.
      1. If funding commitments are not secured in accordance with subsection (1) above, the Recipient will be required to repay disbursed Program grant funds. The proportion of the amount to be repaid (A) to the total grant amount (B) shall be the same as the number of residential units where construction has not timely commenced (C) to the total number of designated residential units (D) (Formula: A=C/D \* B).
   2. The Qualifying Infill Project must complete construction of the housing units which were used as the basis for calculating the Program award within three years of securing all permanent financing. Completion of construction must be evidenced by a certificate of occupancy or equivalent documentation submitted to the Department.Article 5. Operations.

Article 5. Operations.

Section 500. Legal Documents.

Upon the award of Program funds, the Department shall enter into one or more agreements with the Recipient/Sponsor, including a Standard Agreement, which shall commit funds from the Program, subject to specified conditions, in an amount sufficient to encumber the approved Program grant amount. The Standard Agreement shall require the Recipient/Sponsor to comply with the requirements and provisions of these Guidelines, and generally applicable state contracting rules and requirements and all other applicable laws. The agreement or agreements shall contain the following:

1. A description of the approved Capital Improvement Project and the approved Qualifying Infill Project and the permitted uses of Program funds;
2. Provisions governing the amount, terms and conditions of the Program grant;
3. Provisions governing the construction work and, as applicable, the acquisition and preparation of the site of the Capital Improvement Project, and the manner, timing, and conditions of the disbursement of grant funds;
4. The Recipient’s responsibilities for the development of the approved Capital Improvement Project, including, but not limited to, construction management, maintaining files, accounts, other records, and reporting requirements;
5. Provisions relating to the development, construction, affordability, and occupancy of the Qualifying Infill Project supported by the Capital Improvement;
6. Provisions related to administering the program in a manner to affirmatively further fair housing and taking no action that is materially inconsistent with Affirmatively Furthering Fair Housing pursuant to Government Code section 8899.50.
7. Provisions relating to the placement on, or in the vicinity of, the project site, a sign indicating that the Department has provided funding for the Capital Improvement Project. The Department may also arrange for publicity of the Department grant in its sole discretion;
8. Remedies available to the Department in the event of a violation, breach or default of the Standard Agreement;
9. Requirements that the Recipient permit the Department or its designated agents and employees the right to inspect the project and all books, records and documents maintained by the Recipient in connection with the Program grant;
10. Special conditions imposed as part of Department approval of the project;
11. Terms and conditions required by federal or state law;
12. Provisions regarding the required recordation of an affordability covenant again the fee estate of the QIP in accordance with UMR sections 8310(f) and 8315; and
13. Other provisions necessary to ensure compliance with the requirements of the Program.

In addition to the foregoing, the Department will require the recordation of an affordability covenant against the fee estate of the QIP. Such covenant shall be in the form and substance satisfactory to the Department, and it shall run for a term of at least 55 years.

Section 501. Defaults and Cancellations.

* 1. In the event of a breach or violation by the Recipient of any of the provisions of the Standard Agreement, the Department may give written notice to the Eligible Applicant to cure the breach or violation within a period of not less than 15 days. If the breach or violation is not cured to the satisfaction of the Department within the specified time 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.
   1. Funding commitments and Standard Agreements may be canceled by the Department under any of the following conditions:
3. The objectives and requirements of the Program cannot be met by continuing the commitment or Standard Agreement;
4. Construction of the Capital Improvement Project cannot proceed in a timely fashion in accordance with the timeframes established in the Standard Agreement; or
5. Funding conditions have not been or cannot be fulfilled within required time periods.
6. There has been a material change, not approved by the Department, in the Capital Improvement Project.

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

* 1. Upon receipt of a notice of intent to cancel the grant from the Department, the Recipient shall have the right to appeal to the Director of the Department.

Section 502. Reporting Requirements.

* 1. During the full term of the Standard Agreement and covenant and according to the deadlines identified in the Standard Agreement and the covenant, the Recipient shall submit, upon request of the Department, an annual performance report regarding the construction of the Capital Improvement Project; and upon receipt of the certificate of occupancy, an annual monitoring report, on a form provided by the Department, regarding the affordability and occupancy of the housing Project designated in the application.
  2. At any time during the term of the Standard Agreement and/or covenant, the Department may perform or cause to be performed a financial audit of any and all phases of the Qualifying Infill Project and Capital Improvement Project. At the Department’s request, the Recipient shall provide, at its own expense, a financial audit prepared by a certified public accountant.
  3. The Recipient and owner of the parcel of land that is being developed agree to regular monitoring of the housing development by the Department or such designee the Department may name at any time during the term of the Standard Agreement and/or covenant, to verify compliance with the requirements of the Program. The Recipient and owner, or designee, shall submit annual reports as required by the Department on forms approved or provided by the Department, detailing components of the on-going operations of the housing development, as noted in this subsection. The components of annual operations for which reporting is required, which the Department retains the right to inspect, or cause to be inspected, include, and are not limited to:

1. The Qualifying Infill Project, including interior of affordable units, common areas, and exterior of the development;
2. Tenant files, demonstrating compliance with Program affordability and occupancy standards;
3. Financial records, including the right to request a certified financial audit of the revenue, expenses, and operations of the housing development; and
4. Insurance records to ensure continuous insurance coverage in accordance with Department and Program requirements.

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

# Appendices

## Appendix A – Consolidated Scoring Matrix

Please refer to the Consolidated Scoring Matrix by clicking at here.

## Appendix B – MHP Defined Terms

All capitalized terms used throughout these guidelines which are not defined below shall, unless their context suggests otherwise, be given the same meanings of terms as defined in the Multifamily Housing Program Guidelines or as ascribed in the UMRs (Chapter 7, Subchapter 19, Section 8301).

A list of MHP Defined Terms can be found in the MHP Guidelines here.