

**CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY
CALReUSE PROP 1C REMEDIATION PROGRAM
Meeting Date: August 27, 2008
*Consideration of Board Approval Process for Projects***

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Summary of Request. The Authority expects to finance first projects under the CALReUSE Remediation Program beginning fall 2008. The Board may determine to finance projects on a monthly or rolling basis, or alternatively in competitive rounds. This item reviews those options and recommends rolling/monthly funding until available funds are encumbered.

Issue. The Board may determine to finance projects on a monthly or rolling basis, or alternatively in competitive rounds under the CALReUSE Remediation Program, funded by the Housing and Emergency Shelter Act of 2006 (Proposition 1C). The Authority's objective is to adopt a financing method that balances multiple policy goals, which include but are not limited to: fair and equitable distribution of program funds; financing projects with the most public benefits; financing projects in a timely manner.

Background.

Program Development. The California Pollution Control Financing Authority (the "Authority" or "CPCFA") has been working diligently to implement the CALReUSE Remediation Program (Program) funded by the \$2.85 billion Housing and Emergency Shelter Trust Fund Act of 2006 (Proposition 1C).¹ In 2007, \$60 million of these monies was allocated to CALReUSE for the purpose of *brownfield cleanup that promotes infill residential and mixed-used development, consistent with regional and local land use plans* (SB 86, 2007).

The staff of the California Pollution Control Financing Authority conducted a nine month public participation process with interested parties and stakeholders. The collaborative process resulted in the development of a brownfield cleanup program that offers grants and loans up to \$5 million for brownfield cleanup that produces residential and mixed use development in California's infill areas to create housing opportunities for our working families.

Emergency Regulations were initially approved by the Board in December 2007. Upon review, The California Office of Administrative Law (OAL) identified several issues – including minor terminology, syntax, and the clarity of specific regulatory provisions – that necessitated additional action within the emergency rulemaking process. The Board approved the modified Emergency Regulations (Regulations) in February 2008, which were enacted by OAL later that month. Staff was subsequently contacted by the Public Finance Division of the State Treasurer's Office (PFD) and made aware of several structural changes that were necessary due to the

¹ The Housing and Emergency Shelter Trust Fund Act, Proposition 1C, was approved by California voters in November 2006. Of the total \$2.85 billion in general obligation bonds approved under Proposition 1C, \$850 million is slated for the *Regional Planning, Housing and Infill Incentives Account*, which includes a provision for *brownfield cleanup that promotes infill housing development and other related infill development consistent with regional and local plans*. .

constraints and governing statutes of its funding source – general obligation bonds. Staff made the necessary adjustments to the Program and will further address the issues raised by PFD in the permanent rulemaking process.

In spring 2008 staff developed the competitive criteria for selecting Strategic Partners for the Program, and navigating through the State contracting process. Upon evaluation of the proposals that responded to the Authority's competitive bidding process, the Authority selected two Local Strategic Partners – the City of Oakland and the Targhee Consulting Team – and two Statewide Strategic Partners – the Center for Creative Land Recycling (CCLR) and the National Brownfields Association (NBA). These entities were asked to submit a pipeline – an illustration of eligible projects the entity would consider recommending to the Board for financing consideration – as part of their proposal. Although these initial pipelines are preliminary and fluid, initial review clearly indicates that the need for these funds is far greater than the Program's current funding of \$60 million. The four Strategic Partners identified a preliminary need of \$125 million dollars for over 53 projects across the State – prior to any official Notice of Funding Availability or broad outreach effort.²

Program Funds Availability. The CALReUSE Remediation Program is funded by general obligation bonds. Of the total \$2.85 billion approved by voters in Proposition 1C, \$850 million was set aside for the Regional Planning, Housing, and Infill Incentives Account (Infill Incentives Account) for 1) infill incentive grants and 2) *for brownfield cleanup that promotes infill housing and other related infill development consistent with regional and local land use plans.*³ In the 2007-2008 State Budget the Legislature allocated \$300 million of the \$850 million to the Infill Incentives Account, of which \$240 million was allocated for infill incentive grants (Infill Account) administered by the Department of Housing and Community Development (HCD) and \$60 million to CALReUSE to *administer grants and loans ...for the purpose of brownfield cleanup that promotes infill residential and mixed-use development, consistent with regional and local land use plans.*⁴ Subsequent to the Budget Act of 07-08, Assembly Bill 1252 (Caballero) augmented HCD's Infill Account with an additional \$100 million to address the oversubscription the agency faced in administering its Infill Account program. At the time staff prepared this staff summary, \$450 million of the Infill Incentives Account remains unallocated. Staff anticipates that an additional \$200 million will be allocated in the 08-09 Budget Act to HCD's Infill Account, which would result in a remaining \$250 million to be allocated in the 09-10 fiscal year.

Of the \$60 million allocated to CALReUSE, staff estimates that 5% (\$3 million) of the funds will be used by CPCFA to administer the funds over the life of the bonds coupled with the additional 2% (\$1.2 million) that has been earmarked for HCD to cover the additional administrative costs it will incur for the Program. Staff estimates that \$55 million of this initial \$60 million will be available to finance individual projects.

² Proposers were asked to submit a pipeline based on the Program's eligibility requirement and priorities which included potential projects the Proposer had knowledge of, or had received specific inquiries for financing. Projects included in the pipeline were to meet the Program's eligibility criteria up to one year from the submittal date (Summer 2008 to Summer 2009).

³ Health and Safety Code 53545(b)(2).

⁴ Senate Bill 97 (2007), Health and Safety Code Section 53545.01(a) and (b).

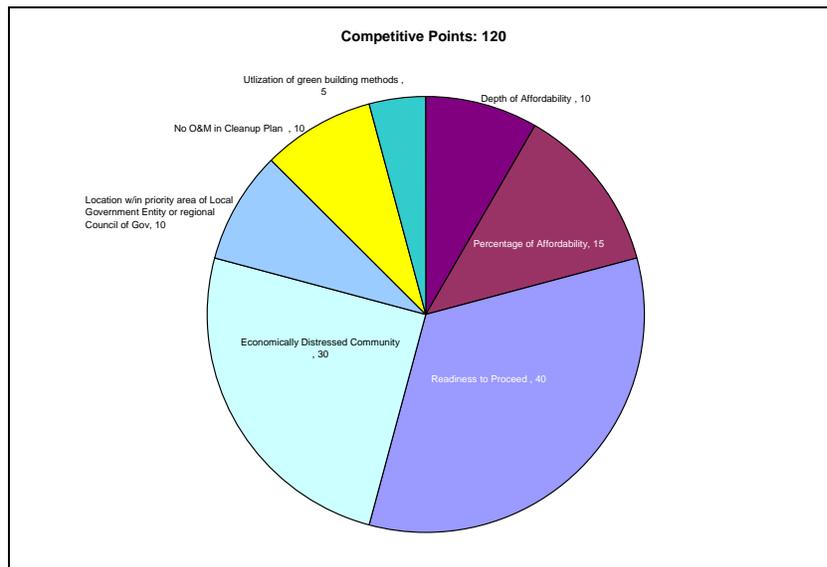
Regulatory Framework. The guidelines and framework for project eligibility and project selection are provided in the Program’s regulations, the most relevant in considering a specific funding method include:

Authority’s Ability to Select Funding Method. Section 8102.10(a) of the Regulations states *...the Authority may elect to proceed in a series of funding rounds in which specified amounts will be made available for allocation. In the alternative, the Authority may make the entire amount available for allocation in one continuous process. The Authority will make its decision in this regard known as early as practicable in any calendar year in which funds are available.*

Geographical Targets. Section 8102.15 of the Regulations establishes the following geographical targets:

- Fresno, Kern, Kings, Madera, Merced, San Joaquin, Stanislaus and Tulare Counties – ten percent (10%);
- Los Angeles, Imperial, Orange, Riverside, San Bernardino and San Diego Counties – fifty-nine percent (59%);
- All other counties – thirty-one percent (31%).

Competitive Points/Scoring Criteria. Section 8102.14 of the Regulations establishes scoring criteria and values (Attachment A) in an effort to quantify the public benefit of projects. Criteria range from project readiness and location within an economically distressed area to depth of affordability and local government support. These scoring criteria can be used in a variety of ways, including allocation being awarded to projects earning the highest number of points or developing a threshold value for a project to be considered (i.e. must earn 70 out of 120 points overall or at least 30 of the 40 project readiness points to be considered). Alternatively, given this is a new program the Authority may choose to utilize the scoring criteria as a data collection tool preliminarily, by which all applications may be scored to collect the necessary data to implement a threshold criteria policy in the future.



Priority of Projects. At the Board's request the regulations include a priority of funding, creating a two tier system. Tier one includes sites that are not on the National Priorities List (NPL Sites) and NPL Sites for which there is no viable Responsible Party. Tier two includes NPL Sites for which a viable responsible party is identified.

Other Policy Goals. Additional policy goals and evaluation criteria could include:

Ensuring Effective Program for the Industry/Users. Brownfield revitalization and redevelopment is a complex endeavor that involves complicated environmental and development issues, tight project timelines, and multiple stakeholders and governmental entities. Recognizing these issues, the Program was designed to balance the need of the applicant and industry for timing flexibility with the Authority's desire to finance projects that meet specific readiness criteria and effectively revitalize sites.

Timely Creation of Housing. Proposition 1C was approved by voters in November 2006, and the initial \$60 million was allocated to CALReUSE the following summer of 2007. Staff recommends that the Authority continue to diligently work to effectively implement this program and finance projects in a timely manner to produce the much needed housing for Californians.

Program "Unknowns." Despite the thoughtful planning, policy considerations, and the stakeholder outreach and industry input involved in the program development, unknown factors remain for the simple reason that the Program is *new* and has not been tested through implementation. How many applicants should we anticipate upon an official notice of funding availability? Will the Program design slow down the revitalization of blighted sights or work in concert with the redevelopment process? Have we accurately targeted the size of the loan/grant to both maximize the number of sites to be developed as well as make an integral impact on larger sites?

Board Approval Process Alternatives.

The Authority's objective is to adopt a financing approval process that balances multiple policy goals that include, but are not limited to: fair and equitable distribution of program funds; financing projects with the most public benefits; and financing projects in a timely manner. Staff has identified three possible approaches outlined below.

Monthly or "Rolling" Consideration. Under this scenario the Authority would consider Projects on a monthly basis, similar to the current financing method under the Bond Program. This method would be the most effective method for the applicant/user, targets projects that clearly meet readiness criteria and would enable the Authority to timely finance projects. Moreover, this method would create consistency between the Assessment and Remediation Programs by the fact that both programs will finance projects when they meet the appropriate readiness criteria.

Geographical Targets. In considering projects the Board would balance the geographical targets with the other Program goals and priorities. This method would require the staff to carefully track the geographical targets for financings, and allow time for outreach in any specific geographic area if needed.

Competitive Points. Staff may potentially recommend a *threshold point value* that establishes a minimum number of points a project must earn to be considered for financing.

Priority Projects. Tier II projects would only be considered if any funds were available after all Tier I projects are considered.

3 Smaller Competitive Rounds (\$20 million, \$20 million, \$10 million). Modeled after the funding method recently considered by the California Industrial Development Financing Advisory Commission (CIDFAC), under this method the Authority would consider the most competitive projects (utilizing the competitive points) until the reservation for the round was depleted. If there is less demand in a specific month, the remaining reservation would roll-over to the next round. Any projects that were not considered would be able to compete in the following round until all funds are depleted. This method would likely have a negative affect on applicants, creating time delays in the complicated process of pre-development cleanup. This scenario would also create a lengthier timeline in the overall distribution process of the \$55 million.

Geographical Targets. In considering projects the Board would balance the geographical targets with the other Program goals and priorities. This method would require staff to carefully track the geographical targets for financings.

Competitive Points. Projects earning the most points for each round would be financed, in conjunction with the Board’s consideration of other policy priorities.

Priority Projects. Tier II projects would only be considered if any funds were available after all Tier I projects a considered.

One Competitive Round. Under this scenario staff would identify a specific Board meeting date for one competitive round as well as a date that all applications would be “due” to Strategic Partners for review and consideration. The Authority would establish these dates in a broad Notice of Funding Availability (NOFA). Staff anticipates this method would create an increased burden on applicants due to the fact that projects that may be “ready” will be delayed until specific dates for Board consideration. In addition, if the applications are not received from a broad geographical distribution of projects – there would be no additional built-in time for outreach.

Geographical Targets. In considering projects the Board would balance the geographical targets with the other Program goals and priorities. As noted above, if the applicant pool was not broad enough this method would not enable outreach to any specific geographical area.

Competitive Points. As noted above, the Board may award financing to those projects earning the most points in conjunction with the Program’s other policy priorities.

Priority Projects. Tier II projects would only be considered if any funds were available after all Tier I projects a considered.

Recommended Method.

Monthly or “Rolling” Consideration. Staff is recommending that the Board consider financing projects on a monthly, or rolling basis. As described above, this method would be the most effective for the applicant/user, targets projects that clearly meet readiness criteria and would enable the Authority to timely finance projects. Moreover, this method would create consistency between the Assessment and Remediation Programs by the fact that both programs will finance projects when they meet the appropriate readiness criteria.

Staff anticipates that the first month of financing will bring a large number of projects due to unmet demand. Staff will conduct an outreach effort to disseminate the initial Notice of Funding Availability, set a specific due date for applications, and provide detailed project briefings to the Board. Staff will continue to review whether to utilize a *threshold point value* in evaluating and considering potential projects for financing.

Next Steps/Target Dates.

- Continue to navigate through the permanent rulemaking process – ongoing.
- Enter into contracts with Strategic Partners – August 2008.
- Advertise a Broad Notice of Funding Availability – September 1, 2008.
- Consider Initial Projects – November 19, 2008.

Recommendation. Staff recommends that the Authority direct CPCFA Staff to notify all interested parties that potential projects under the CALReUSE Remediation Program will be considered on a monthly or rolling basis as long as funds are available.

Attachment A

**CALIFORNIA CODE OF REGULATIONS
Title 4. Business Regulations
Division 11. California Pollution Control Financing Authority
Article 9. California Recycle Underutilized Sites (CALReUSE) Program**

Scoring Criteria (Section 8102.15)

All Infill Applications will be scored based upon the following criteria:

- (a) Readiness to Proceed: maximum of 40 points.
 - (1) The Applicant has demonstrated that environmental review can be completed and all necessary entitlements can be received from the local jurisdictions within two years of receiving the award: 10 points.
 - (2) Funding commitments are in place, or financing application are under review, for the Infill Development Project: 10 points.
 - (3) The Infill Development Project has local community and government support: 10 points.
 - (4) Cleanup Plan has been approved by Oversight Agency: 5 points
 - (5) Applicant has building permits, and all other governmental permits (encroachment, right of way, demolition, air quality permits, etc.) in place or under review: 5 points
- (b) Location within an Economically Distressed Community: 30 points
- (c) Location within a priority development area of a local government entity or regional council of governments: 10 points
- (d) Depth of Affordability: maximum of 10 Points
 - (1) 50% of Area Median Income: 5 points
 - (2) 40% of Area Median Income: 10 points
- (e) Percentage of Affordability: maximum of 15 points
 - (1) less than 30% but greater than 15 % of the total number of units: 5
 - (2) more than 30% but less than 50% of the total number of units: 10 points
 - (3) more than 50% of the total number of units: 15 points
- (f) Utilization of Green Building Methods: 5 points
 - (1) LEED Certified: 5 Points
 - (2) Exceeding Title 24 Standards by 30 percent: 5 points
 - (3) A minimum of 60 GreenPoint Rating points: 5 points
- (g) The Cleanup Plan for the Brownfield Infill Project does not require Ongoing Operation and Maintenance: 10 points
- (h) In tie-breaker situations, projects will be prioritized based on their effective use of Infill Grant or Infill Loan dollars, measured by a ratio of the anticipated cost of the Remediation Plan or Cleanup Plan per residential housing unit created.