

**CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY
BROWNFIELDS FINANCING PROGRAM
Executive Summary**

ITEM. California Recycle Underutilized Sites Program (CALReUSE Program) **Date Requested:** December 18, 2007

Request. Amend CPCFA regulations to 1) implement the CALReUSE Remediation Program, and 2) amend the CALReUSE Assessment Program.

Remediation Program Summary.

- **Program Development.** In developing the CALReUSE Remediation Program staff conducted a nine month process of information gathering and consultation with stakeholders and industry experts.
- **Remediation Program Goals.** The Remediation Program’s goals are the cleanup and redevelopment of brownfields for residential housing and mixed use development within California’s infill areas. By providing both loans and grants, the program offers financial terms that prioritize the revitalization of economically struggling communities and creating affordable housing for California’s working families.
- **Priority.** The priority, scoring, and financial terms favor projects with the most public benefits.
- **Funding.** \$60 million of Proposition 1C funds were allocated to CALReUSE in the 2007 budget. The Legislature may determine to allocate addition Proposition 1C funds in future fiscal years.
- **Program Administration.** Strategic Partners will provide technical assistance, ~~select projects~~ recommend projects to the Authority, distribute ~~loan~~ funds, and help to administer the program. The Strategic Partner²s will bring pipelines of ~~proposed~~ anticipated financings to the Authority for approval on a quarterly basis. Subsequent to the approval of the pipelines, ~~the~~ Authority will approve the financing of ~~grants~~ grants individually projects, ~~while the Strategic Partners will enter into loan agreements upon the Authority’s approval of the pipeline.~~

Site Assessment Program Modifications

- Staff is recommending amending the CALReUSE Assessment Program, created in 2001, to implement several measures that would 1) strengthen its effectiveness in assisting brownfield redevelopment, and 2) create consistency between the Assessment and Remediation Programs.

Regulatory Process.

- Authority approval of emergency regulations.
- Submit Emergency Regulations to Office of Administrative Law (OAL).
- 5-day Public Comment Period.
- Day 10—Emergency Regulations in effect, program is operational.
- 6-months (180 days) to complete public comment period and obtain final Authority approval required for filing permanent regulations with OAL.

Timeline.

- December: Begin emergency regulatory process.
- March: Strategic Partners and Trustee on board.
- April – June: First loans/grants funded.

Packet Contents.

- Staff Report.
- Summary of Program Regulations. ATTACHMENT A (~~to come~~ blue pages).
- Text of Regulations. ATTACHMENT B (~~to come~~ green pages).

Staff Recommendation: Adopt resolution required to amend the CPCFA regulations to 1) implement the CALReUSE Remediation Program, and 2) amend the CALReUSE Assessment Program.

**PROPOSED REGULATIONS FOR THE
CALIFORNIA RECYCLE UNDERUTILIZED
SITES (CALReUSE) PROGRAM TO
IMPLEMENT PROVISIONS OF THE
HOUSING AND EMERGENCY SHELTER
TRUST FUND ACT (PROPOSITION 1C)**
December 18, 2007

STAFF SUMMARY – CPCFA

Prepared by: Deana Carrillo

ISSUE

The Housing and Emergency Shelter Trust Fund Act (“Proposition 1C”)¹ was approved 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.*² In the most recent State budget, \$60 million of Proposition 1C funds were allocated to the CALReUSE program.³ The funds are for *loans or grants... for the purposes of brownfield cleanup that promotes infill residential and mixed-use development, consistent with regional and local land use plans.*

Request. Pursuant to this legislative mandate, staff proposes amending the CPCFA regulations to 1) implement the CALReUSE Remediation Program, and 2) amend the CALReUSE Assessment Program to increase its effectiveness and create consistency between the two programs.

REMEDIATION PROGRAM SUMMARY

Program Development. In developing the CALReUSE Remediation Program staff conducted a nine month process of information gathering and consultation, which included stakeholder meetings, teleconferences, and public workshops involving: state agencies, infill developers, brownfield cleanup practitioners, affordable housing advocates, local redevelopment agencies, environmental justice and social justice advocates, environmental attorneys and financiers. Through this process, the staff gained a strong understanding of the program’s mandate, California’s housing need and program structuring concerns. Staff believe the regulations appropriately balance programmatic, legal and public policy considerations.

Program Goals. The CALReUSE Remediation Program’s goal is to spur the cleanup and redevelopment of brownfields for residential and mixed use development within California’s infill areas. The priority and competitive criteria favor projects with the most public benefits, and the deepest depth and duration of affordability.

¹ The Act adds Part 12 (beginning with Section 53540) to Division 31 of the Health and Safety Code.

² Health and Safety Code Section 53545(b)(2)

³ Funds were allocated from a \$300 million appropriation to the Department of Housing and Community Development Infill Incentive Account.

The Remediation Program will provide both grants and very low interest loans. This two-tiered structure enables the program to absorb much of the inherent risk that impedes the redevelopment of brownfields.

The grant term is designed to target the development projects with the most public benefits, with threshold criteria of at least 15 percent of the project creating affordable housing units. “Affordable” for rental units is restricted to households earning no more than 60 percent of the area median income for at least 55 years. Ownership units will be restricted to households earning no more than 120% of the area median income, and will be sold to and occupied by a qualified household and subject to resale restrictions for at least 30 years or equity sharing upon resale.⁴

The loan term is designed to assist in accelerating community development and make a project move forward that otherwise would not. The revolving loan program will eventually (approximately 8-10 years from now) recycle the Proposition 1C monies and accelerate the redevelopment of additional brownfields to produce housing.

The number of affordable housing units, housing units, and redeveloped sites will be measures of the Remediation Program’s success.

Funding. CPCFA has been allocated \$60 million of Proposition 1C funds from the 2007 budget. The Legislature has the ability to allocate additional Proposition 1C funds to CALReUSE in future fiscal years.

The Remediation Program allows loans and grants between \$50,000 and \$5 million. A specific award may be increased upon a finding by the Authority that the proposed project has substantial public policy and community benefits. If each borrower/grantee were awarded the maximum amount, as few as eleven (11) sites could be funded (estimating that 7% of the \$60 million will be earmarked for administrative and statewide overhead costs).

Program Administration. The CALReUSE Remediation Program will continue to use Strategic Partners to work with developers to finance cleanup of brownfield sites. The partners can be public or private entities. The existing site assessment program is administered through five local government Strategic Partners (City of San Diego, City of Bakersfield, City of Emeryville, City of Oakland, and City of Berkeley) and one statewide partner (the Center for Creative Land Recycling). Strategic Partners provide technical assistance, ~~select~~recommend projects, distribute funds, and help administer the program.

The Strategic Partners will bring a pipeline of proposed projects to receive financing loans and grants they anticipate to finance to the Board for approval on a quarterly basis (at a minimum). The Authority will allocate funds to each Strategic Partner based on its proposed pipelines. This process will reserve an allocation or “pot” of funding per Strategic Partner, assist the Authority in managing the program and help meet specific geographic and policy targets. Once a specific project within a pipeline has been approved the Strategic Partner will score the proposed project

⁴ 2007 Budget Act, Senate Bill 86

~~using the Authority's criteria and bring recommended projects to the Authority for financing approval. and will specifically approve each grant financing.~~ Strategic Partners will enter into loans and grants on behalf of the Authority. If a Strategic Partner's allocation remains unencumbered for six months, the ~~b~~Board may revoke the funds for redistribution to other projects. In competitive situations, the ~~higher scoring projects will be given priority; Strategic Partners and CPCFA staff will award~~ points ~~will be awarded to the Applicant's projects~~ based on specific criteria ranging from project readiness and depth and duration of affordability to utilization of green building methods and location within an economically distressed community.

Staff anticipates requesting approval of Strategic Partners at ~~the~~ Authority's ~~February~~March 2008 meeting.

All program funds will be distributed and loan repayments collected through the use of a trustee bank.

SITE ASSESSMENT MODIFICATIONS SUMMARY

Staff is recommending amending the CALReUSE Assessment Program, created in 2001, to implement several measures that would 1) strengthen its effectiveness ~~ins~~ assisting brownfield redevelopment, and 2) create consistency between the Assessment and Remediation Programs. The primary changes and policy considerations are outlined in the regulatory summary attached, including: increasing the loan amount, modifying the definition of Oversight Agency, and removal of the eligibility exclusion of specific types of contaminated sites.

Summary of Program Regulations. ATTACHMENT A (~~to come~~blue pages) contains a brief summary of each of the sections of the proposed regulations, the key elements of each section, and the policy decisions, if any, underlying the section. In some cases, the policy decisions will be implemented through the written agreement to be entered into between the CPCFA and each Strategic Partner or through administrative procedures the CPCFA adopts for the program.

Text of Regulations. ATTACHMENT B (~~to come~~green pages) contains the actual text of the proposed emergency regulations.

REGULATORY PROCESS

After Authority approval of the regulations, an emergency rulemaking file will be submitted to the Office of Administrative Law (OAL). The emergency regulations will be subject to a five-day public comment period and the OAL review period ends on the tenth day following submission. Upon OAL's approval of the emergency regulations, OAL will file the emergency regulations with the Secretary of State; the emergency regulations will become effective upon this filing. These emergency regulations will be valid for six months (180 days), during which time CPCFA must complete the process for obtaining approval of permanent regulations.

The process for approval of permanent regulations will commence by publishing a copy of the regulations in the California Regulatory Notice Register (the "Register"). This starts a 45-day public comment period. After that time, staff will review and respond to any comments and present the final form of the permanent regulations to the Authority for approval. If there are substantial modifications, the revised regulations must be published in the Register again for a 15-day public comment period before Authority approval. After Authority approval, a

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rulemaking file is submitted to OAL, and OAL has 30 working days to review the regulations for compliance with the Administrative Procedures Act and the Authority's statute. Once OAL approves the regulations, they are filed with the Secretary of State and become effective 30 days later.

TIMELINE

December	File Emergency Rulemaking File with OAL
January	Emergency Regulations in effect – 10 working days after submitting to OAL
March February	CPCFA Approves Strategic Partner and Trustee Selection
April March	Strategic Partners & Trustee on Board
May April – June	First Loans Funded Approved for Funding

RECOMMENDATION

Staff recommends adoption of a resolution to amend the CPCFA regulations to 1) implement the CALReUSE Remediation Program, and 2) amend the CALReUSE Assessment Program.

**A RESOLUTION OF THE CALIFORNIA POLLUTION
CONTROL FINANCING AUTHORITY APPROVING
REGULATIONS AND AUTHORIZING EMERGENCY
RULEMAKING PROCEEDINGS AND OTHER ACTIONS
RELATED THERETO, INCLUDING THE PUBLIC NOTICE
AND COMMENT PROCEDURES**

WHEREAS, the California Pollution Control Financing Authority (the "Authority") is authorized by California Health and Safety Code Section 44520, 44559.5, 53545(b)(2) and 53545.14(a) to adopt regulations to implement and make specific the statutory provisions governing the Authority; and

WHEREAS, the Authority has determined that amendments to the Authority's regulations relating to its California Recycle Underutilized Sites Program (the "CALReUSE Program"), as authorized in Article 9.1 and 9.2 of Chapter 1 of Division 27 of the Health and Safety Code, are necessary to be adopted at this time to implement the Cal ReUSE Program.

NOW, THEREFORE, BE IT RESOLVED by the California Pollution Control Financing Authority as follows:

Section 1. The proposed form of Regulations, on file with the Authority, is hereby approved. The Chair, Executive Director and Deputy Executive Director are hereby authorized to file the Regulations, with the supporting documentation required by law, with the Office of Administrative Law as emergency regulations in the form currently on file with the Authority.

Section 2. The Chair and Executive Director are hereby authorized to proceed with the public notice and comment procedures required by California Rulemaking Law prior to submitting permanent regulations to the Office of Administrative Law.

Section 3. The Chair and Executive of the Authority are hereby authorized to take necessary actions, including making changes to the Regulations as may be required for approval by the Office of Administrative Law, and to execute and deliver any and all documents necessary or advisable in order to effectuate the purposes of this resolution.

Section 4. This resolution shall take effect immediately upon its approval.

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**SUMMARY OF PROGRAM REGULATIONS
AND POLICY DECISIONS**

The emergency regulations are intended to provide direction regarding program usage and focus; project, grant and loan eligibility is clearly described, as are allowable costs and funding priorities. The regulations will be supplemented by contracts between CPCFA and each Strategic Partner to reflect the specific resources and administrative procedures that each Strategic Partner will use to implement the program.

Following is a brief summary of each of the sections of the proposed regulations, the key elements of each section, and the policy decisions, if any, underlying the section. In some cases, the policy decisions will be implemented through the written agreement to be entered into between the CPCFA and each Strategic Partner or through administrative procedures the CPCFA adopts for the program.

SubArticle 1. Cal ReUSE Brownfield Assessment Program

Modifications to Existing Site Assessment Program

A number of modifications have been made to the existing Site Assessment Program to strengthen its effectiveness as a tool for brownfield redevelopment and enhance its compatibility with the Remediation Program; the most prevalent are highlighted below.

§ 8090. Assessment Program Definitions.

- **Consultant:** The definition of *consultant* is being modified to track with the federal definition.
- **Oversight Agency:** The definition of *Oversight Agency* is being modified to account and accommodate for any future legislative or regulatory changes.
- **Strategic Partner:** The definition of Strategic Partner is being modified to include the Authority.

§ 8091. Brownfield Project Loan Eligibility.

- **Excluded Sites:** The exemption of Federal Superfund Sites, State Superfund Sites, former military bases, and former waste recovery facilities is being removed. Throughout implementing the site assessment program, and developing the remediation program, staff received several compelling arguments and real life situations in which redeveloping these previously excluded sites is possible. Being a “listed” site should not in and of itself preclude a project from eligibility, and utilizing state funds to accelerate the redevelopment of these areas is an important public policy goal.

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§ 8095. Loan Terms.

- **Interest Rate.** The interest rate for the site assessment program is being changed from the State Surplus Money Investment Fund (4.65%) to the Six Month London Interbank Offered Rate (LIBOR).
- **Loan Size:** The site assessment program has been modified to increase its loan size from \$125,000 per site, to \$300,000 per site generally, and \$500,000 for infill residential or mixed use development sites. This change addresses the increased complexity and regulatory changes relating to site characterization.

Policy Decisions:

Oversight Agency. California state law is overlapping in its regulation of hazardous material. Over the years, authority has been given to the Regional Water Boards, Department of Toxic and Substance Control (DTSC), fire departments and various city and county environmental health branches under the Certified Unified Program Agency administered by CalEPA. Staff simplified its definition to 1) address anticipated and potential future changes to state law and regulation for hazardous material, and 2) accommodate the flexibility within the program design.

Inclusion of Previously Excluded Sites. Throughout the development of the remediation program, staff has received several compelling arguments that redeveloping these sites is possible. Being a “listed site” should not in and of itself preclude a project from eligibility, and utilizing state funds to accelerate the redevelopment of these areas is an important public policy goal.

Increase in Loan Amounts. The site assessment program has been modified to increase its loan size from \$125,000 per site, to \$300,000 per site generally and \$500,000 for infill residential or mixed use development sites. This modification has been made to address the increased complexity, cost, and unknown of brownfield site assessment and characterization. As of today, approximately \$8 million remains unencumbered within the site assessment program.

Modification in Interest Rate. The interest rate is being amended to create consistency between the Site Assessment and Remediation Programs, The interest rate for the site assessment program is being changed from the State Surplus Money Investment Fund (4.65% in 2007) to the Six Month London Interbank Offered Rate (LIBOR) which was 4.96% as of Monday, December 10, 2007.

Proposition 1C Funds will not be used in Assessment Program. The CALReUSE Site Assessment Program was established to address the uncertainty within brownfield redevelopment, to enable the developer to determine if the cleanup/mitigation costs and overall project economics create a viable project. The risk that these sites will not be developed remains, and in situations when the development of these sites does not move forward loans are forgiven. Given the Proposition 1C mandate of financing the creation of residential and mixed use development, the staff does not believe that site characterization would be a prudent use of

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funds at this time. Staff may readdress this issue once the Remediation Program has established a successful track record.

SubArticle 2. Cal ReUSE Remediation Program

§ 8102. Brownfield Infill Project Program Definitions.

- Brownfield Infill Project: A Brownfield project for the Remedy, Remedial Action, mitigation and clean-up of Hazardous Material.
- Brownfield Remediation Final Report: Is the report submitted by the Borrower/Grantee upon the completion of the cleanup, which will include a description of the remedial work that took place and a copy of the Completion Certificate provided by the Oversight Agency.
- Completed Infill Development Project Report: A report submitted by the Borrower/Grantee that certifies the development is complete, including a certificate of occupancy and any appropriate regulatory agreements regarding the depth and duration of affordable housing built.
- Eligible Brownfield Infill Project Cost: Is a description of the costs eligible for financing, including: the cost of remedial work and development cost required by the Cleanup Plan and Oversight Agency; technical assistance, government oversight of the Cleanup Plan, environmental insurance, and the ability to create a long-term financing mechanism for remedial operation & maintenance.
- Infill Area: A contiguous area that has been previously developed that is located within established urban and/or rural neighborhoods or communities, where those neighborhoods or communities are already served with streets, water, sewer and other public services. This is the definition that is currently used in the Sustainable Communities Grants and Loan Program (SCGL).
- Infill Development Project: A development project within an Infill Area, consistent with Regional and Local Land Use Plans, which produces or promotes Residential Development or Mixed Use Development.
- Mixed Use Development: A development project including residential use and at least one other type of use in a building or set of buildings. Along with residential, included uses can be, but are not limited to some combination of commercial, industrial, office, institutional, or other land uses.
- Promote(s) Infill Residential Development or Mixed Use Development: An Infill Development Project that is directly related to and necessary for the development of new Residential Development or Mixed Use Development and required by the local governing body.
- Regional and Local Land Use Plan(s) means at least one of the following:

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- (1) The adopted general plan of city, county, or city and county, in which the Infill Development Project resides;
 - (2) The housing element of the city, county, or city and county, in which the Infill Development Project resides;
 - (3) A project area redevelopment plan;
 - (4) A regional blueprint plan;
 - (5) A capital improvement plan; or
 - (6) A regional transportation plan or a transportation corridor plan.
- Regulatory Agreement: A recorded legal agreement between the Applicant and a public agency that determines the restrictions and terms of affordability of the housing units created by the Infill Development Project.

Policy Decisions:

Promote(s) Infill Residential Development and Mixed Use Development. The program allows for the financing of projects that do not directly create housing units, yet are directly related to and necessary for the development of new housing units. A local government must provide certification that a specific project “promotes” housing. Staff anticipates this provision enabling the financing of parks, community centers and other vital community services and amenities.

§ 8102.1. Infill Grant and Infill Loan Eligibility.

The Strategic Partner will determine loan/grant eligibility by confirming, among other things, that:

- The Applicant proposes an Brownfield Infill Project within an Infill Area;
- The Applicant submits a Cleanup Plan that has been submitted to, or approved by, and Oversight Agency.
- The Applicant submits an All Appropriate Inquiries report.
- The Loan/Grant will fund Eligible Costs;
- The Applicant is a Development Entity, or shows the ability to retain a Development Entity;
- The Applicant identifies all funding sources for the Brownfield Infill Project over and above the CALReUSE Loan/Grant and potential sources to fund development of the Brownfield;
- The Applicant demonstrates the Infill Development Project Promotes Infill Residential or Mixed Use Development.
- The Applicant demonstrates the Infill Development Project is consistent with Regional and Local Land Use Plan(s).

Policy Decisions:

Requirement of Cleanup Plan Approved by Oversight Agency. Although the program targets financing early within the development process, it is in the midst of the remediation/pre-development process. The program requires that the applicant have a Cleanup Plan approved by an Oversight Agency prior to receiving funding. This requirement was enacted for several

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reasons: it is a strong indicator that the cleanup project will move forward in a timely manner, development can occur quickly, and addresses the concern that there is an appropriate Oversight Agency regulating the cleanup.

§ 8102.2. Infill Application Content.

An Infill Application will illicit information needed for the Strategic Partner to determine grant or loan eligibility, to understand the development potential of the project, and to manage funding and cleanup reporting requirements, and will include:

- Information regarding the Oversight Agency and Cleanup Plan
- Information regarding the Brownfield for which the Infill Grant or Infill Loan is being requested, including:
- A description of the Brownfield Infill Project
- A description of the proposed Infill Development Project including, but not limited to:
 - Evidence the Infill Development Project is consistent with Regional or Local Land Use Plans, or where consistency depends on pending changes to the plans, the Applicant may submit a letter from the local planning director demonstrating the local governing agency’s support for the Infill Development Project.
 - Evidence the Infill Development Project Promotes Infill Residential or Mixed-Use Development, including:
 - The number of housing units to be created;
 - Where affordable housing is proposed, the depth and duration of the affordability of the housing units;
 - Description of area jobs, community amenities and transit;
 - Description of the population the Infill Development Project will serve;
 - If the final characteristics of the Infill Development Project are dependent on pending financing, the Applicant must include descriptions of any intended alternative development as it relates to the final characteristics of the Infill Development Project.
 - The estimated time period for completion, components, and costs for the Infill Development Project;
 - A description of obstacles to the reuse of the Brownfield (e.g., regulatory issues, complex remediation, liability, and/or marketability).
 - A description of community involvement and local government support for the Brownfield Infill Project and Infill Development Project.
- A description of the Applicant’s experience managing projects similar to the one proposed and the qualifications of key personnel involved.
- Identification and contact information of the primary persons and their roles and responsibilities for performing and overseeing the activities necessary to complete the Brownfield Infill Project.
- Identification of potential funding sources for:
 - Completion of the Brownfield Infill Project;
 - Completion of the Infill Development Project; and

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- Repayment of the Infill Loan (if applicable).
- A description of requested Eligible Brownfield Infill Project Costs to be financed by the Infill Grant or Infill Loan.
- The requested Infill Grant or Infill Loan amount and term.

§ 8102.3. Infill Application Availability, Submission and Strategic Partner Review.

Infill applications will be submitted to the Strategic Partner who will:

- Determine eligibility of the project.
- Notify the Applicant within 45 days following the receipt of a completed Infill Application whether the Strategic Partner will recommend the project to the Authority for approval, or why the application is denied.

§ 8102.4. Infill Grants and Infill Loans.

The program has been designed to prioritize those projects that have the most significant public benefits, targeting the revitalization of economically distressed communities and creation of additional affordable housing opportunities for California's working families.

- Infill Grants and Infill Loans will have a \$50,000 minimum and a \$5,000,000 maximum.
 - An Infill Grant and Infill Loan may be combined but cannot go below the minimum or above the maximum.
 - The Authority may waive the maximum upon a finding that it is in the public interest and advances the purposes of the program.
- **Infill Grants** may be awarded to Applicants with Infill Development Projects that meet the following characteristics:
 - The Infill Development Project includes not less than fifteen percent (15%) affordable units, restricted to 60% AMI for rental units and 120% AMI for ownership units.
 - And, meets a threshold density requirement.

OR

The Infill Development substantially includes any of the following characteristics:

- Housing for homeless populations.
 - Housing for special needs populations.
 - Single Room Occupancy (SRO) housing.
 - HUD supportive housing for the elderly and person with disabilities.
 - Housing for families with special needs that require temporary relocation.
 - Grants may not be awarded to any entity with a legally established obligation to clean-up or remediate the Infill Brownfield Project.
- **Infill Grants** cannot be awarded to any responsible party.

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- **Infill Loans** will be awarded to any other eligible project at an interest rate no greater than the Six Month London Interbank Offered Rate (LIBOR) but not less than 2%, fixed at the time of loan execution.
- Conversion of All or Part of a Loan. When the specific financing/characteristics of the project remain uncertain at the time of application, the applicant may enter into a loan agreement under market rate terms; once confirmation is received that the project qualifies for grant funding, terms may be converted to a grant, adjusted to the date of origination.
- Infill Development Projects that Promote Infill Residential or Mixed Use Development. An Infill Development Project that in and of itself does not produce housing units, but can be shown to Promote Infill Residential or Mixed-Use Development, will be eligible to receive the financial terms of the new housing that the Infill Development Project is related to, and necessary for.
- A lien will be placed on the property, subordinated to private and public lenders where necessary, to achieve completion of the Infill Development Project.

Policy Decisions:

Financial Terms. The financial terms are designed to benefit projects with the most significant public benefits, while enabling the program to assist in redeveloping brownfields across the spectrum of potential development projects.

Convertible Loans. This provision addresses concerns that the nature of a development project, including the affordability level, may shift during the development process. This is done by allowing the loan and grant terms to change based on the final characteristics of the completed development project. The program will be used at a time when an applicant's financing and/or specific characteristics of the development project could be uncertain. Will they receive the financing to assist them in creating a threshold of 15% affordable units? In order to respond to these situations, an applicant may enter into a loan agreement under market rate terms; a loan may be converted to a grant based on the final characteristics of the completed development project.

Loans/Grants Secured with a Lien. Given the Authority is statutorily required to finance specific types of development, the lien, which will be subordinated to private and public investment, will ensure that developers will "build what they said they'd build."

§ 8102.5. Infill Grant and Infill Loan Approval.

Upon recommendation from the Strategic Partner, the Authority may approve an Infill Application under the following the conditions:

- The infill application is complete and meets all requirements.
- The Applicant proposes an eligible project.
- The Application has been scored based on the Authority's criteria.

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An Applicant may submit an Infill Application where its Remedial Action Plan or Cleanup Plan has been submitted to, but has not yet been approved by, the appropriate Oversight Agency.

- The Strategic Partner shall conduct a preliminary review and inform the Applicant the Infill Application is complete contingent upon receipt of a Remedial Action Plan or Cleanup Plan approval from the appropriate Oversight Agency.
- The notice of a completed Infill Application shall not be binding; however, where the Infill Grant or Infill Loan is ultimately funded, any Eligible Brownfield Infill Costs may be reimbursed back to the date the Infill Application was deemed complete by the Strategic Partner.

Commitment Letter. Upon the Authority’s approval of an Infill Application for funding, the Strategic Partner shall notify the Applicant by a letter describing the terms and conditions of the Infill Grant or Infill Loan.

- A Commitment Letter will reserve the Applicant’s award until the Cleanup Plan or Remedial Action Plan is approved by the Oversight Agency.
- A Commitment Letter is valid for twelve (12) months. If the Applicant’s Cleanup Plan or Remedial Action Plan has not been approved by an Oversight Agency within the term:
 - The Authority may extend the term of any commitment letter upon a finding that it is in the public interest and advances the purposes of the program.
 - The award may be deemed to be unencumbered and return to the Authority.
 - The Applicant may be required to re-submit its Infill Application to be considered for any subsequent Infill Grant or Infill Loan.

Policy Decisions:

Commitment Letter. An applicant will receive a commitment letter that will reserve the award for 12 months. The term of the commitment letter will provide the necessary time for the applicant to receive Oversight Approval of the Cleanup Plan, which is frequently a lengthy process. Upon term expiration, the Authority may choose to revoke the commitment and allocate the funds to a project that indicates it can create housing within a more efficient timeframe.

§ 8102.6 Infill Grant and Infill Loan Terms.

The terms and conditions of an Infill Grant or Infill Loan shall be set forth in an Infill Grant Agreement or Infill Loan Agreement and will include:

- A requirement that the Applicant will submit a letter from the Oversight Agency approving the Cleanup Plan before any funds will be disbursed.
- A requirement that the first draw on the funds be made within twelve (12) months of the execution of the Infill Grant Agreement or Infill Loan Agreement.

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- A term not to exceed 6 years from the first draw to complete both a) the remedial work and, b) the infill development project.
- Term may be extended by the Strategic Partner by as much as two years;
- For an Infill Loan, principal and interest due at loan maturity (balloon payment), no monthly amortization of loans required.
- Any unused Infill Grant or Infill Loan funds shall revert to the Authority.
- Agreement that a Brownfield Remediation Final Report will be prepared.
- Agreement that a Completed Infill Development Project Report will be prepared.
- Agreement that the Borrower or Grantee will comply with all applicable laws that apply to the Brownfield and the Cleanup Plan.
- Agreement that the Borrower or Grantee will work with the Oversight Agency identified in the Infill Grant Agreement or Infill Loan Agreement.
- Agreement that the Borrower or Grantee will defend, indemnify and hold harmless the Authority and the State.
- Agreement that a Borrower or Grantee providing false material information may result in:
 - Acceleration of repayment of the Infill Loan or conversion of the Infill Grant to an Infill Loan;
 - The Applicant may be fined up to twenty-five percent (25%) of the Infill Loan or Infill Grant award.
 - Notification of state and local entities of Borrower or Grantee's representation of false information.
- Conditions of Default.
- Default Provisions.

§ 8102.7. Conditions of Funds Disbursement, Funds Disbursement and Loan Repayment Procedures.

Conditions to be met prior to disbursement:

- All other funds for completing the Brownfield Infill Project are identified and committed for use.
- Commitment letter terms and conditions are satisfied.
- All Infill Loan or Infill Grant documents are executed.

Disbursement to Borrowers/Grantees:

- Borrowers will submit invoices to the Strategic Partner as the project progresses.

§ 8102.8 Infill Loan and Infill Grant Extensions.

Infill Loan or Infill Grant Extensions.

- Strategic Partner may extended the loan/grant term for two years if:
 - The Applicant clearly demonstrates that it is unable to complete the Brownfield Infill Project by the end of the term, and
 - The Brownfield Infill Project or Infill Development Project can be completed in the additional time requested.

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- The Authority may grant additional extensions upon a finding that it is in the public interest and furthers the purposes of the program.

Policy Decisions

Loan Extensions. The program has been designed to balance the complicated nature of brownfield remediation with the need to create new housing units for working Californians. To that end, financed projects should be completed within a reasonable timeframe. Strategic Partners will have the discretion to extend loans for two years beyond the six year term. Any additional extension will be determined by the Authority. The regulations are silent as to the maximum number of loan extensions or the maximum term of the extension to maintain the program’s flexibility.

§ 8102.9. Strategic Partner Reports and Records Retention.

A Strategic Partner shall provide the following quarterly reports to the Authority:

- Applications Received Report.
- Request for Funds Report.
- Brownfield Infill Projects Status Report.
- Outstanding Infill Grants and Infill Loans Report.
- Infill Development Project Status Report.

Strategic Partners will be required to retain all of the Borrower’s records pertaining to the Infill Application, Infill Grant or Infill Loan for a least 6 years after the termination of the Infill Grant or Infill Loan.

§ 8102.10. Allocation of funds to Strategic Partners.

- In allocating funds to Strategic Partners, the Authority may elect to proceed in a series of funding rounds in which specified amounts will be made available; or alternatively, the Authority may make the entire amount available for allocation in one continuous process.
- Once each quarter, the Authority shall review Strategic Partners’ pipelines of anticipated financings in order to allocate funds to the Strategic Partners. The Strategic Partners’ allocation will remain in effect for six months. Upon expiration of the allocation, any unused allocation shall revert to the Authority.

Policy Decisions

Strategic Partners Submission of Pipelines. This process will reserve an allocation or “pot” of funding per Strategic Partner, assist the Authority in managing the program and help meet specific geographic and policy targets. Once a specific project has been approved within a pipeline the Strategic Partner will score the proposed project using the Authority’s criteria and bring recommended projects to the Authority for financing approval.

§ 8102.11. Strategic Partner Eligibility and Selection Criteria.

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A Strategic Partner can be a governmental agency, or public, private or nonprofit agency, and will be selected upon application to the Authority and upon meeting the following conditions:

- Ability to provide Technical Assistance to a Development Entity;
- Understanding of the economic and real estate development processes specifically as applied to Infill Residential Development and Infill Mixed Use Development;
- Understanding of environmental assessment and remediation requirements;
- Understanding of Brownfield regulatory and reporting requirements;
- Demonstrated experience in evaluating the economic viability of proposed Infill Residential Development and Infill Mixed Use Development; and
- Demonstrated partnership experience.

In addition to or in lieu of contracting with a Strategic Partner, the Authority may at any time elect to act as a Strategic Partner in providing all of the services set forth in Section 8090(ah).

§ 8102.12. Strategic Partner as Applicant, Borrower, and/or Grantee.

The following shall apply in all cases where the Strategic Partner is the Applicant and/or a Grantee or Borrower:

- the Authority shall be the Strategic Partner as to such Application and Loan.
- the Executive Director shall be authorized to:
 - Determine whether the project shall be eligible for funding.
 - Review the application and notify the Applicant of his recommendation.
 - Recommend funding and notify the Applicant of Board approval/disapproval.
 - Cause funds to be disbursed.
 - Determine whether a Grant or Loan shall be extended.

§ 8102.13. Technical Assistance.

Upon request of an Applicant, Borrower, or Grantee the Strategic Partner may provide Technical Assistance to assist in the remediation of a Brownfield Project.

§ 8102.14. Scoring Criteria.

All projects will be scored prior to being recommended to the Board for approval. If the brownfield remediation program becomes oversubscribed, the higher scoring projects will be given priority.

- (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 applications 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

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- (5) Applicant has building permits, and all other governmental permits (i.e., encroachment, ROW, 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) 30% to 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 state dollars, measured by a ratio of the anticipated cost of the Cleanup Plan per residential housing unit created.

§ 8102.15. Geographic Distribution Targets.

The Brownfield remediation program has the following targets for geographical distribution of funds:

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

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

SubArticle 1. Cal ReUSE Brownfield Assessment Program

§ 8090. Assessment Program Definitions.

In addition to the definitions set forth in Section 8102, ~~The~~ the following definitions shall govern construction of this Article 9.

(a) "Applicant" means any for-profit or not-for-profit organization, school district, participating party as defined in California Health and Safety Code Section 44506, or public agency as defined in California Health and Safety Code Section 44509 applying for a Loan, Infill Loan, or Infill Grant.

(b) "Application" means the information referred to in Section 8092 or Section 8093.

(c) "Authority" means the California Pollution Control Financing Authority, organized and existing under and by virtue of Division 27 (commencing with Section 44500) of the California Health and Safety Code.

(d) "Borrower" means an Applicant whose Loan or Infill Loan has been approved and who has executed a Loan Agreement.

(e) "Brownfield" means a real estate parcel, or improvements located on the parcel, or both that parcel and the improvements, which is abandoned, idled, or underused, due to real or perceived environmental contamination, including, but not limited to, soil or groundwater contamination, the presence of underground storage tanks, or the presence of asbestos or lead paint on the parcel or in the improvements located on the parcel.

(f) "Brownfield Project" means a project for the site assessment and characterization of, and/or Planning for Remediation of Hazardous Material at a Brownfield.

(g) "Census Designated Place" means a place designated as a census designated place by the Bureau of the Census.

(h) "Consultant" means an environmental professional as defined in 40 CFR, Section 312.10. ~~any of the following:~~

~~(1) A Class II environmental assessor registered by the Office of Environmental Health Hazard Assessment pursuant to Chapter 6.98 (commencing with Section 25570) of Division 20 of the California Health and Safety Code;~~

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~~(2) A professional engineer registered in this State;~~

~~(3) A certified professional engineering geologist registered in this State; or~~

~~(4) A licensed hazardous substance contractor certified pursuant to Chapter 9 (commencing with Section 7000) of Division 3 of the California Business and Professions Code. A licensed hazardous substance contractor shall hold the equivalent of a degree from an accredited public or private college or university or a private postsecondary educational institution approved by the Bureau for Private Postsecondary and Vocational Education with at least 60 units in environmental, biological, chemical, physical, or soil science; engineering; geology; environmental or public health; or a directly related science field.~~

~~In addition, a Consultant shall have at least three years experience in conducting site assessment and characterization.~~

(i) "Development Entity" means an entity engaged in the development of real estate.

(j) "Economically ~~Struggling~~ Distressed Community" means a community that the Applicant demonstrates to the satisfaction of the Strategic Partner is any one or more of the following:

(1) A community with an unemployment rate equal to or greater than 125% of the statewide average based on the California Employment Development Department's most recent annual average for sub-county areas.

(2) A community with median family income of less than 80% of the statewide average based on the most recent census data available for cities or Census Designated Places. (If no city or Census Designated Place level data is available, or if the Applicant chooses to identify an area that is smaller than a city or Census Designated Place, such as census tract or tracts, smaller areas will be used.)

(3) A community with a poverty rate equal to or greater than 110% of the statewide average based on the most recent census data available for cities or Census Designated Places. (If no city or Census Designated Place level data is available, or if the Applicant chooses to identify an area that is smaller than a city or Census Designated Place, such as census tract or tracts, smaller areas will be used.)

(4) A state designated Enterprise Zone (including a Local Agency Military Base Recovery Area, Manufacturing Enhancement Area or Targeted Tax Area).

(5) A federally designated Empowerment Zone pursuant to 26 U.S.C. Section 1392, ~~or~~ Enterprise Community pursuant to 26 U.S.C. Section 1392, or Renewal Community pursuant to Section 1400E of Title 26 of the United States Code.

(6) A redevelopment project area adopted pursuant to California Health and Safety Code Sections 33000 et seq., where the Strategic Partner determines that the project area meets the definition of blighted area contained in California Health and Safety Code Section 33030.

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(7) A city or county with a military base designated for closure pursuant to the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100-526), the Defense Base Closure and Realignment Act of 1990 (Public Law 101-510), or any subsequent closure approved by the President of the United States without objection by the Congress. The provision will apply to proposed projects within two miles of a military base closure in an urban setting and to proposed projects within five miles of a military base closure in a rural setting.

(k) "Eligible Costs" means reasonable and necessary Brownfield Project costs, including but not limited to costs associated with any of the following:

(1) Site assessment and characterization.

(2) Technical Assistance.

(3) Planning for Remediation of Hazardous Material.

(4) Obtaining access to a Brownfield to conduct a Brownfield Project.

(5) Governmental oversight related to site assessment and characterization, and Planning for Remediation of Hazardous Material.

~~(l) "Empowerment Zone" means any area that meets the standards for designation as an empowerment zone under 26 U.S.C. Section 1392.~~

~~(m) "Enterprise Community" means any area that meets the standards for designation as an enterprise community under 26 U.S.C. Section 1392.~~

~~(n) "Enterprise Zone" means any area within a city, county, or a city and county that is designated as an enterprise zone by the Trade and Commerce Agency in accordance with the provisions of Section 7073 of the California Government Code.~~

~~(o) "Executive Director" means the Executive Director of the California Pollution Control Financing Authority.~~

~~(p) "Feasibility Study" means the identification and evaluation of technically feasible and effective Remedial Action alternatives to protect public health and the environment at a Brownfield for purposes of developing a Remedial Action Plan.~~

~~(q) "Final Report" means a written document prepared by an Independent Consultant that describes the Independent Consultant's findings resulting from the site assessment and characterization, Planning for Remediation of Hazardous Material, and/or technical assistance performed by the Independent Consultant in connection with a Brownfield.~~

~~(r) "Forgiven Loan" means a Loan for which repayment of all, or a portion, of the Loan is forgiven upon the conditions set forth in Section 8097.~~

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(g s) "Hazardous Material" means a hazardous material as defined in Section 25260(d) of the California Health and Safety Code.

(r t) "Hazardous Waste Reporting Laws" means any and all state, federal and local laws, including, without limitation, statutes, rules, regulations, ordinances, administrative orders, judicial orders or consent decrees, requiring the reporting to any governmental, quasi-governmental or regulatory entity of any release, threatened release, presence or existence of a Hazardous Material or any similar substance or material into the environment.

(s u) "Independent Consultant" means a Consultant who meets all of the following requirements:

- (1) The Consultant is not an employee of, general or limited partner or a shareholder in, or have any other ownership or management interest in the Borrower, a known Responsible Party, or a prospective buyer of the Brownfield;
- (2) The Consultant does not receive any source of income from the Borrower, a known Responsible Party, or a prospective buyer of the Brownfield, other than the payment of fees for professional services unless the Consultant is acting in his or her capacity as an employee of a governmental entity; and
- (3) The Consultant does not accept, or agree to accept, any payment that is in any way contingent upon the outcome of a Final Report.

(t v) "Loan" means a loan made in accordance with the procedures set forth in this Article 9.

(u w) "Loan Agreement" means a written agreement for a Loan entered into between a Borrower and the Strategic Partner, or where the Strategic Partner is the Borrower, between the Borrower and the Authority.

(v x) "Local Agency Military Base Recovery Area" means any military base or former military base or portion thereof that is designated as a local agency military base recovery area under the Local Agency Military Base Recovery Area Act (Cal. Govt. C. Section 7105, et seq.).

(w y) "Manufacturing Enhancement Area" means an area designated as a manufacturing enhancement area ~~by the Trade and Commerce Agency in accordance with the provisions of~~ pursuant to California Government Code Section 7073.8.

(x z) "Match" means the Strategic Partner's financial contribution to the Brownfield Project in an amount equal to 25 percent (25%) of the Loan amount. Match also means a monetary contribution and/or related costs of overhead and staffing in amounts and percentages of each as set forth in the written agreement between the Strategic Partner and the Authority, by a Strategic Partner or other entity involved with the Brownfield Project.

(y aa) "Oversight Agency" means any agency with the lawful authority to oversee assessment activities, review and approve Cleanup Plans, oversee Remedial Actions and provide confirmation as to the completion of Remedial Actions required to return Brownfield properties to economically beneficial use consistent with the intended development of the Brownfield. of the following:

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~~(1) The applicable Regional Water Quality Control Board;~~

~~(2) The California Department of Toxic Substances Control;~~

~~(3) A local agency, if the Brownfield is an underground storage tank site subject to Chapter 6.7 (commencing with section 25280) of Division 20 of the California Health and Safety Code and if all of the requirements set forth in subdivision (d)(2) of California Health and Safety Code Section 33459.1 are satisfied;~~

~~(4) An agency certified as a Certified Unified Program Agency or CUPA pursuant to Chapter 6.11 of Division 20 of the California Health and Safety Code (commencing with Section 25404); or~~

~~(5) The agency designated as the administering agency pursuant to California Health and Safety Code Section 25262.~~

~~(z ab)~~ "Planning for Remediation of Hazardous Material" means conducting a Feasibility Study, conducting a Remedial Investigation, ~~and/or~~ preparing a Remedial Action Plan or Cleanup Plan.

~~(aa ae)~~ "Public Infrastructure" means facilities accessible to the public that may include, but are not limited to, public roads, sewers, drainage, water, natural gas and/or electricity, telephone, and transportation services.

~~(ab ad)~~ "Remedial Action Plan" or "Cleanup Plan" means a plan approved by the Oversight Agency for performing a Remedy or taking a Remedial Action.

~~(ac ae)~~ "Remedial Investigation" means those actions necessary to determine the full extent of a Hazardous Material at a Brownfield, identify the public health and environment threat posed by the Hazardous Material, collect data on possible remedies, and otherwise evaluate the Brownfield, for purposes of developing a Remedial Action Plan.

~~(ad af)~~ "Remedy or Remedial Action" means any action taken to remove, correct, cleanup, mitigate, remediate or abate a release of Hazardous Materials. ~~has the same meaning as that term is used in California Health and Safety Code Section 25322, except that, for purposes of this article, the references in Section 25322 to a "hazardous substance" shall be deemed to be references to a "Hazardous Material".~~

~~(ae ag)~~ "Small Business" has the same meaning as ~~means that term as defined in Title 4, Division 11, Article 2, Section 8020 of Title 4 of the California Code of Regulations.~~

~~(af ah)~~ "Strategic Partner" means an entity chosen by the Authority in accordance with Section 8100 and Section 8102.10 that receives and processes Applications or Infill Applications, ~~and/or~~ provides Technical Assistance, ~~and/or~~ disburses funds, ~~and/or~~ provides administrative services to Borrowers for purposes of this Article 9 pursuant to a written agreement with the Authority. In the event the Authority does not contract with a Strategic Partner, or elects to act as a Strategic Partner pursuant to Section 8102.10(d), Strategic Partner means the Authority. Under certain circumstances, the Strategic Partner may be the Applicant, ~~or~~ the Borrower, or the Grantee. In

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the event the Strategic Partner is an Applicant, ~~or a Borrower,~~ or Grantee, the Authority shall be the Strategic Partner as to such the Application, Loan, Infill Application, Infill Loan or Infill Grant.

(~~ag ai~~) "Targeted Tax Area" means an area designated as a targeted tax area by the ~~California Trade and Commerce Agency~~ in accordance with the provisions of California Government Code Section 7079.

(~~ah aj~~) "Technical Assistance" means information, education, training and assistance provided to an Applicant, ~~and/or Borrower,~~ or Grantee by a Strategic Partner or its agent regarding Brownfield site assessment and characterization, Planning for Remedial of Hazardous Material, implementation of a Cleanup Plan and ~~or~~ environmental regulation. Technical Assistance does not include any actions that would constitute participation in the management of property as defined in Section 25548.1 of the California Health and Safety Code or in 42 U.S.C. Section 9601(20)(F). Unless a Strategic Partner is a governmental entity that is exercising its regulatory authority under other applicable laws, regulations, inter-agency agreements, or governmental programs, a Strategic Partner shall not participate in the management of property as defined in Section 25548.1 of the California Health and Safety Code or in 42 U.S.C. Section 9601(20)(F).

§ 8091. Brownfield Project Loan Eligibility.

An Applicant shall be eligible for a Loan when the Strategic Partner determines all of the following:

- (a) The Applicant submits an Application that meets the requirements of Section 8092;
- (b) The Applicant proposes a Brownfield Project;
- (c) The Loan is requested to fund a portion of Eligible Costs associated with a Brownfield Project;
- (d) The Applicant demonstrates the ability to retain, or is, a Development Entity;
- (e) If the Loan and Match together does not finance all costs of the Brownfield Project, the Applicant identifies a funding source or financial means to finance the costs of the Brownfield Project not covered by the Loan;
- (f) The Applicant identifies a potential funding source or financial means to repay the Loan;
- (g) The Applicant demonstrates the ability to gather likely sources of capital to develop the Brownfield;
- (h) The Applicant has not been convicted of a felony or misdemeanor involving the regulation of Hazardous Materials, including, but not limited to, a conviction of a felony or misdemeanor under California Health and Safety Code Section 25395.13; and

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- (i) Any affirmative responses provided in Section 8092(m) do not materially impugn the integrity of the Borrower or will not adversely affect the Borrower's ability to comply with these regulations,; and
- ~~(j) The Brownfield is not a parcel:
 - ~~(1) Currently listed on the National Priorities List pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Section 9605(a)(8)(B)); or~~
 - ~~(2) Currently listed for a response action pursuant to Section 25356 of the California Health and Safety Code.~~
 - ~~(3) That is, or has ever been, owned or operated by a department, agency, or instrumentality of the United States.~~
 - ~~(4) That is a hazardous waste facility that is subject to the requirements of Article 9, Chapter 6.5, Division 20 of the California Health and Safety Code.~~~~

§ 8092. Brownfield Project Application Content.

An Application shall include all of the following:

- (a) The Applicant's name, address, telephone number, federal tax identification number, type of business or entity, the date the business or entity was established.
- (b) Whether the Applicant qualifies as a Small Business.
- (c) The identity of the owner and any operators of the Brownfield, including name, address, and telephone number.
- (d) If the Applicant is not the owner of the Brownfield, evidence of:
 - (1) The Applicant's legal interest in the Brownfield;
 - (2) Permission of the owner of the Brownfield for the Applicant or the Applicant's agent(s) to have access to the Brownfield (governmental action already taken or that is expected to be taken prior to disbursement of loan proceeds to gain access or control of the Brownfield will be deemed to be permission to have access to the Brownfield); and
 - (3) Permission of the owner of the Brownfield for the Applicant or the Applicant's agent(s) to perform a Brownfield Project on the Brownfield (governmental action already taken or that is expected to be taken prior to disbursement of loan proceeds to gain access or control of the Brownfield will be deemed to be permission to perform a Brownfield Project on the Brownfield).

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- (e) Information regarding the Brownfield for which the Loan is being requested, including:
 - (1) A description of the Brownfield including:
 - (A) the location of the Brownfield, including the street address, city, county, assessor parcel number(s), and or legal description of the Brownfield;
 - (B) evidence of the Brownfield's location in an Economically ~~Struggling~~ Distressed Community, if applicable;
 - (C) a site layout that includes the location and dimensions of any existing buildings, utilities, and other pertinent features, if available;
 - (D) the current use and zoning of the Brownfield;
 - (E) the current land uses and zoning of adjacent property and the surrounding neighborhood;
 - (F) identification of Public Infrastructure and its proximity to the Brownfield;
 - (G) previous use of the Brownfield;
 - (H) known and suspected Hazardous Material located at the Brownfield;
 - (I) proposed reuse of the Brownfield, if known;
 - (J) the estimated time period for completion, components, and costs of the Brownfield Project; and
 - (K) the goals and objectives of and the benefit to the community from the Brownfield Project or development of the Brownfield.
 - (2) Development timetable for the Brownfield.
 - (3) A description of obstacles to reuse of the Brownfield (e.g., regulatory issues, complex remediation, liability, and/or marketability).
 - (4) Identification of local regulatory and land use jurisdictions within which the proposed Brownfield Project is located.
 - (5) A description of community involvement and local government support for the Brownfield Project.
- (f) A description of the Applicant's experience managing projects similar to the one proposed and the qualifications of key personnel involved.
- (g) Identification of a person that meets the definition of an Independent Consultant that will perform the activities necessary to complete the Brownfield Project.

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- (h) Identification of the proposed Oversight Agency if the proposed Loan will be used to finance Planning for Remediation of Hazardous Material. If the proposed Oversight Agency is different from a previous or current Oversight Agency, provide information explaining the change.
- (i) Identification of potential funding sources for:
 - (1) Completion of the Brownfield Project.
 - (2) Development of the Brownfield.
 - (3) Repayment of the Loan.
- (j) A description of requested Eligible Costs to be financed by the Loan.
- (k) The requested Loan amount and term.
- (l) Information demonstrating ability to provide Match for the Loan.
- (m) Information regarding any past or current bankruptcies, loan defaults, foreclosures, convictions, or criminal, civil or administrative investigations, orders, proceedings, litigation, settlements, or judgments, by or involving the Borrower Applicant or to which Borrower Applicant is or was a party.
- (n) A signed, notarized statement from the Applicant whereby the Applicant agrees to all of the following:
 - (1) To provide Application-related documentation to the Strategic Partner upon request;
 - (2) That the Application will be evaluated according to Authority regulations, and that a Loan is not an entitlement;
 - (3) That information submitted to the Strategic Partner or the Authority is subject to the California Public Records Act; and
 - (4) Under penalty of perjury, that all information provided to the Strategic Partner or the Authority is true and correct, and that the Applicant has an affirmative duty to notify the Strategic Partner or the Authority of changes causing information in the Application or other submittals to become false.

§ 8093. Application Availability, Submission and Strategic Partner Review.

- (a) Loan Applications shall be available from the Authority's staff or from any Strategic Partner. Applicants can obtain a list of Strategic Partners or a copy of the Application by contacting the Authority's staff at the following address: California Pollution Control Financing Authority, 915 Capitol Mall, Room 457, Sacramento, California, 95814 Attention: California Recycle Underutilized Sites (CALReUSE ~~Cal ReUSE~~) Program, or by telephoning (916)

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654-5610. The Application shall contain the information set forth in Section 8092. The Applicant shall submit one (1) complete and signed Application to a Strategic Partner.

- (b) The Strategic Partner shall review each Application in accordance with the provisions of this Article 9. No later than forty-five (45) days following receipt of an Application, the Strategic Partner shall in writing either:
 - (1) Notify the Applicant that the Application is approved;
 - (2) Notify the Applicant that the Application is denied and the reasons for the denial; or
 - (3) Notify the Applicant if the Application remains incomplete and describe what additional information the Applicant needs to submit to complete the Application. If the Strategic Partner determines that any document submitted in the Application is not adequate, the Application shall be deemed incomplete.

§ 8094. Loan Approval and Commitment Letter.

- (a) Loan Approval.

- (1) The Strategic Partner shall be authorized to approve an Application when:
 - (A) The Application is complete and meets all of the requirements of Section 8091; and
 - (B) Funds are available.
- (2) The Strategic Partner shall give priority to Applications for Loans as follows:
 - (A) First, to Brownfields located in Economically ~~Struggling~~ Distressed Communities;
 - (B) Second, to Brownfields located in areas with existing Public Infrastructure; and
 - (C) Third, to other Brownfields.

- (b) Commitment Letter. If the Loan is approved, the Strategic Partner shall notify the Applicant by a letter committing the Authority to provide Loan funds so long as the Applicant strictly complies with the terms and conditions contained therein. The commitment letter shall include at least all of the following:

- (1) Name(s) of the Borrower and any guarantor.
- (2) Loan amount and term.
- (3) A description of Eligible Costs to be financed by the Loan.
- (4) Description of Match, including amount and type.
- (5) Interest rate and any required loan fees.

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- (6) A requirement that any evidence described in Section 8092 as being expected prior to the disbursement of loan proceeds shall be received as a condition to disbursement of loan proceeds.
- (7) Disbursement process, including a statement that Loan proceeds shall be disbursed on a reimbursement basis.
- (8) Insurance requirements.
- (9) Conditions and covenants.
- (10) The date when the commitment expires.
- (11) A statement that the Authority reserves the right to modify or cancel the commitment upon failure of the Applicant to execute a Loan Agreement that includes all of the terms and conditions set forth in the commitment letter, or if the Authority or the Strategic Partner becomes aware of any matter which, if known at the time of Loan review or approval, would have resulted in the Application not being approved. Such matters may include, but will not be limited to:
 - (A) A determination that the Application was prepared incorrectly, contains incorrect information or omits required information.
 - (B) Business circumstances that would negatively affect the Applicant's ability to repay the Loan.

§ 8095. Loan Terms.

The terms and conditions of a Loan shall be set forth in a Loan Agreement executed by the Borrower and shall include, at a minimum, all of the following terms and conditions:

- (a) A fixed interest rate equal to ~~the average earnings rate of the Six Month London Interbank Offered Rate (LIBOR)~~ but not less than two percent (2%) at the time the Loan Agreement is executed ~~State's Surplus Money Investment Fund for the calendar year prior to the date the Loan is made;~~
- (b) A Loan amount not greater than ~~one hundred twenty five~~ three hundred thousand dollars ~~(\$125,000)~~ (\$300,000) or where the proposed use of the Brownfield is for an Infill Development Project as defined in Section 8102, the maximum loan amount shall be five hundred thousand dollars (\$500,000) for Eligible Costs with respect to a Brownfield. The Authority may waive the maximum Loan amount upon finding that it is in the public interest and advances the purposes of the program. For purposes of this subdivision, contiguous or related parcels included in a Brownfield Project that are owned or controlled by the same Borrower shall together be deemed to constitute one Brownfield.
- (c) A Loan term not to exceed thirty-six (36) months;
- (d) Principal and interest to become due and payable in full upon the earliest of:

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- (1) Issuance of either a grading permit or a building permit for the Brownfield;
 - (2) Sale or transfer (including, without limitation, an option to purchase or a contract of purchase) of all or part of the Brownfield;
 - (3) The maturity date set forth in the Loan Agreement, which date shall not be more than thirty-six (36) months after the date of the Loan; or
 - (4) The occurrence of an event of default under the Loan Agreement.
- (e) Evidence that the cash portion of the Match will be met at closing of the Loan and a description of and acknowledgment of credit for any non-cash portion of the Match;
 - (f) Disbursement and repayment procedures pursuant to Section 8096;
 - (g) A provision that any unused Loan funds shall revert to the Authority;
 - (h) Default provisions including, but not limited to, interest from and after the date of default at a rate of ten percent (10%) per annum;
 - (i) Agreement to comply with the Authority's program statutes and regulations;
 - (j) Agreement that the Borrower will defend, indemnify and hold harmless the Authority and the State, and all officers, trustees, agents and employees of the same, from and against any and all claims, losses, costs, damages, or liabilities of any kind or nature, whether direct or indirect, arising from or relating to the Loan, the Brownfield or this program, including but not limited to, any and all claims, losses, costs, damages, or liabilities arising from or related to the presence, release, threatened release, investigation or remediation of Hazardous Material of the Brownfield;
 - (k) Agreement to comply with laws outlawing discrimination including, but not limited to those prohibiting discrimination because of sex, race, color, ancestry, religion, creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer or genetic characteristics), sexual orientation, political affiliation, position on a labor dispute, age, marital status, and denial of statutorily-required employment-related leave;
 - (l) Agreement that continued compliance with program requirements is the Borrower's responsibility;
 - (m) Agreement that if the Loan is used for Eligible Costs pursuant to Section 8090(k)(1) and/or Section 8090(k)(3), that the Borrower will cause the Independent Consultant to prepare a Final Report;
 - (n) Agreement that the Borrower will provide or cause to be provided to the Strategic Partner a copy of the Final Report within 30 days of completion of the Final Report;
 - (o) Agreement that the Borrower will comply with all Hazardous Waste Reporting laws applicable to the Brownfield or resulting from the contents of the Final Report;

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- (p) Agreement that the Borrower will deliver to the Strategic Partner within 90 days after Borrower's receipt of the Final Report a certification to the Authority in writing and under penalty of perjury all of the following:
- (1) That the Borrower is informed of and understands all Hazardous Waste Reporting Laws applicable to the Brownfield and the contents of the Final Report;
 - (2) Whether there was a reporting requirement under any of the Hazardous Waste Reporting Laws applicable to the Brownfield or resulting from the contents of the Final Report;
 - (3) That the Borrower has made all the reports required by the Hazardous Waste Reporting Laws applicable to the Brownfield or resulting from the contents of the Final Report in the manner and within the time periods required by such Hazardous Waste Reporting Laws; and
 - (4) To whom and when ~~such~~ the report was made.
- (q) Agreement that Borrower's failure to comply with any Hazardous Waste Reporting Law applicable to the Brownfield or resulting from the contents of the Final Report, or failure to deliver the certification required by Section 8095(p) within the time period required, will constitute an event of default under the Loan resulting in all of the principal and interest on the Loan becoming immediately due and payable.
- (r) If the Loan is for Planning for Remediation of Hazardous Materials, agreement that upon entering into the Loan Agreement, the Borrower will identify an Oversight Agency that will oversee and approve the activities that constitute Planning for Remediation of Hazardous Materials;
- (s) Agreement by the Borrower to comply with all applicable law, including but not limited to statutes, rules, regulations, administrative orders and agreements, and judicial orders or consent decrees that apply to the Brownfield, related to or arising from assessment, characterization and remediation of a Brownfield, including but not limited to those requiring the preparation of a description of Hazardous Material on the Brownfield and those requiring oversight and supervision to assure the adequacy of any Feasibility Study, Remedial Investigation or Remedial Action Plan by the Oversight Agency;
- (t) Agreement that if the Borrower recovers damages from a person who is liable for the release, threatened release, presence or existence of a Hazardous Material at the Brownfield, any money so recovered shall be used first to repay the Loan, except that the Borrower shall be permitted to retain fees and costs incurred in recovering the damages; and
- (u) Any other provision agreed to by the parties.

§ 8096. Conditions of Funds Disbursement, Funds Disbursement and Loan Repayment Procedures.

- (a) Conditions of Funds Disbursement. The Strategic Partner shall not disburse Loan funds unless all of the following conditions are met:

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- (1) All funds for completing the Brownfield Project are obtained and available for use;
 - (2) All terms and conditions contained in the commitment letter described in 8094(b) are satisfied; and
 - (3) Execution of a Loan Agreement, Promissory Note and any other documents, as required, and compliance with all conditions precedent to disbursement contained in the Loan Agreement.
- (b) Funds Disbursement. The Strategic Partner shall cause funds to be disbursed as follows:
- (1) The Borrower shall sign and submit to the Strategic Partner a signed invoice documenting the service or procedure performed from entities providing materials and services for Eligible Costs covered by the Loan Agreement.
 - (2) Upon receipt of the signed invoice, the Strategic Partner, in its sole discretion, shall authorize the disbursement of Loan funds to the Borrower:
 - (A) First, from the cash portion of the Match until depleted, and
 - (B) Second, from the funds of the Authority committed by the Authority for the Loan.
- (c) Loan Repayment Procedures. The Strategic Partner shall cause any Brownfield Project loan repayment proceeds received from the Borrower to be delivered promptly upon receipt by the Strategic Partner to the following entities in the following order:
- (1) First, to the Authority until the funds advanced by the Authority for the Loan, or a Forgiven Loan, are repaid in full, with interest, and
 - (2) Second, to the Strategic Partner to repay any loan to the Borrower by the Strategic Partner in connection with the Brownfield Project, if applicable.

§ 8097. Loan Extensions, Loan Forgiveness and Conditions for Forgiven Loans.

- (a) Loan Extensions. Upon written request received from the Borrower, the maturity of a Loan may be extended by the Strategic Partner if both of the following conditions are met:
- (1) The Borrower clearly demonstrates that it is unable to complete the Brownfield Project by the end of the Loan term, and
 - (2) The Borrower clearly demonstrates how the Brownfield Project can be completed in the additional time requested.
- (b) Loan Forgiveness. Upon written request from the Borrower, a Loan may be forgiven by the Strategic Partner if the Borrower, acting reasonably and in good faith, fails to complete the Brownfield Project or proceed with development of the Brownfield.

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(c) Conditions for Forgiven Loans. Any forgiveness of a Loan hereunder shall be conditioned on:

(1) The Borrower's execution of a written agreement whereby:

(A) The Borrower promises that in the event the Borrower subsequently causes (i) the issuance of either a grading permit or a building permit for the Brownfield or (ii) sells or transfers (including, without limitation, an option to purchase or a contract of purchase) all or part of the Brownfield, the Borrower will repay the forgiven balance of the Loan (and the Strategic Partner shall receive and deliver such funds in accordance with Section 8096(c)); and

(B) The Borrower promises that if it recovers damages from a person who is liable for the release, threatened release, presence or existence of a Hazardous Material at the Brownfield, any money so recovered shall be used first by the Borrower to repay the forgiven balance of the Loan, except that the Borrower shall be permitted to retain fees and costs incurred in recovering the damages.

(2) The Borrower's delivery of documentation to the Strategic Partner evidencing that the Borrower has complied with all applicable laws, including but not limited to statutes, rules, and regulations, administrative orders and agreements, judicial orders, and consent decrees that apply to the Brownfield and relate to or arise from the site assessment and characterization, Planning for Remediation of Hazardous Materials, and remediation of the Brownfield. Such documentation shall include evidence that the Borrower has complied with any applicable requirement to obtain oversight and approval from an Oversight Agency.

(3) The Borrower's delivery of the Final Report to the Strategic Partner as required by Section 8095(n).

(4) The Borrower's delivery to the Strategic Partner of the certification as required by Section 8095(p).

§ 8098. Strategic Partner Reports and Records Retention.

(a) A Strategic Partner shall provide the following quarterly reports to the Authority no later than the fifteenth day of April, July, October, and January for the quarters ending in March, June, September and December, respectively:

(1) Applications Received Report. This report shall include the following information:

(A) A listing of identified Brownfield Projects for which Applications have been submitted and for which funding is anticipated during the next six months.

(B) Identification of whether proposed Brownfields Projects are located in Economically ~~Struggling~~ Distressed Communities.

(C) Identification of whether the Strategic Partner is the Applicant.

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- (2) Request for Funds Report. This report shall include the following information for each Brownfield Project to be funded during the next three months:
 - (A) A description of the Brownfield Project.
 - (B) Identification of whether the Brownfield Project is located in an Economically ~~Struggling~~ Distressed Community.
 - (C) Identification of whether the Strategic Partner is the Applicant.
 - (D) Identification of whether the Applicant qualifies as a Small Business.
 - (E) Requested Loan amount for Brownfield Project.
 - (F) Description of Eligible Costs to be funded for the Brownfield Project.
 - (G) Proposed Loan term.
 - (H) Description of Match for the Brownfield Project including the source and amount of Match.
 - (I) Identification of total amount of loan funds requested for the quarter.
- (3) Brownfields Projects Status Report. This report shall describe the current status of each Brownfield Project for which a Loan (including a Loan for which the Strategic Partner is the Borrower) remains outstanding including:
 - (A) A description of activities performed at the Brownfield for the previous three months.
 - (B) A statement of whether ~~or not~~ the Strategic Partner has received the Final Report and, if so, a summary of the Final Report that was received during the previous three months.
 - (C) A statement of whether ~~or not~~ the Strategic Partner has received the certification ~~as~~ required by Section 8095(p).
- (4) Outstanding Loans Report. This report shall describe the current repayment status of every Loan (including a Loan where the Strategic Partner is the Borrower) including:
 - (A) Name of Borrower.
 - (B) Identification of whether the Borrower is a Small Business.
 - (C) Identification of whether the Borrower is a Strategic Partner.
 - (D) Name of Brownfield Project.
 - (E) Street Address of the Brownfield.

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(F) Draw down on Match.

(G) Current payments.

(H) Total Loan repayment status.

(I) If a Loan is extended:

- i. The date that the Loan was extended, and
- ii. The current Loan amount and term.

(J) If a Loan is a Forgiven Loan:

- i. The date that the Loan was forgiven, and
- ii. The amount forgiven.

(5) Other reports and documents as reasonably requested by the Authority.

(b) Brownfields Development Status Report. A Strategic Partner shall provide an annual report no later than February 1 to the Authority that shall describe the current status of the development of each Brownfield for which a Loan (including a Loan where the Strategic Partner is the Borrower) was made including:

- (1) A description of the proposed use for the Brownfield.
- (2) A detailed description of development activities performed at the Brownfield for the previous year.
- (3) Upon completion of development of the Brownfield, a description of the final use for the property.

(c) Records Retention. A Strategic Partner shall retain the Application, all documents that were submitted by the Borrower with the Application, and all documents pertaining to the Loan and the Brownfield Project for at least six years after the later of the termination of the Loan, or the completion of actions and the resolution of all issues, that arise as a result of any litigation, claim, negotiation or audit concerning the Loan Agreement or an agreement executed pursuant to Section 8097(c)(1).

§ 8099. Technical Assistance.

- (a) Upon request of an Applicant or Borrower the Strategic Partner may provide Technical Assistance to assist in the ~~development~~ assessment of a Brownfield Project.
- (b) Technical Assistance provided by a Strategic Partner ~~for~~ during the assessment phase of the Brownfield Project may count as Match for the Brownfield Project, but may not be reimbursed with Loan funds.

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~~(e) Unless a Strategic Partner is a governmental entity that is exercising its regulatory authority under other applicable laws, regulations, inter-agency agreements, or governmental programs, a Strategic Partner shall not engage in any actions that would constitute participation in the management of property as defined in Section 25548.1 of the California Health and Safety Code or in 42 U.S.C. Section 9601(20)(F).~~

§ 8100. Strategic Partner Eligibility and Selection Criteria.

- (a) A governmental agency or public or private entity shall be eligible to participate as a Strategic Partner and Strategic Partners will be selected by the Authority based upon the following eligibility and selection criteria:
 - (1) Demonstrated ability to provide Technical Assistance to a Development Entity;
 - (2) Demonstrated understanding of the economic and real estate development processes;
 - (3) Demonstrated understanding of environmental assessment and remediation requirements;
 - (4) Demonstrated understanding of Brownfield regulatory and reporting requirements; and
 - (5) Demonstrated partnership experience.
- (b) The services to be provided by a Strategic Partner pursuant to Section 8090(ah) hereof shall be provided as an independent contractor pursuant to a written agreement to be entered into by and between the Strategic Partner and the Authority.
- (c) An entity may not act as a Strategic Partner as to any Brownfield for which such entity is a responsible party as defined by Section 25323.5 of the California Health and Safety Code. However, as to any such Brownfield, the entity may be an Applicant and Borrower, and the Authority shall be the Strategic Partner with respect to such Application and Loan.

§ 8101. Strategic Partner as Applicant or Borrower.

The following shall apply in all cases where the Strategic Partner is the Applicant ~~and/or~~ the Borrower or in the event the Strategic Partner is unable to act relative to an Applicant due to a conflict of interest as defined in the Political Reform Act (Government Code Sections 81000 through 91014):

- (a) ~~In the event that a Strategic Partner is an Applicant or a Borrower, the~~ The Authority shall be the Strategic Partner as to ~~such~~ the Application and Loan.
- (b) If the Authority is the Strategic Partner, the Executive Director shall be authorized to:
 - (1) Determine whether the Applicant shall be eligible for a Loan pursuant to Section 8091 ~~hereof~~.
 - (2) Review the Application and notify the Applicant pursuant to Section 8093 ~~hereof~~.

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- (3) Approve the Loan and notify the Applicant pursuant to Section 8094 hereof.
- (4) Cause funds to be disbursed to the Borrower pursuant to Section 8096 hereof.
- (5) Determine whether a Loan shall be extended or forgiven pursuant to Section 8097 hereof.

Subarticle 2. CalReUSE Remediation Program.

§ 8102. Brownfield Infill Project Program Definitions.

In addition to, or in place of the definitions contained in Section 8090, the following definitions shall govern construction of the Brownfield Infill Project Program.

- (a) “Brownfield Infill Project” means a project within an Infill Area involving the Remedy, Remedial Action, mitigation and clean-up of Hazardous Material, including assessment and site characterization regarding Hazardous Materials first uncovered in the course of mitigation or remediation funded by an Infill Grant or Infill Loan.
- (b) “Brownfield Remediation Completion Document” means a written verification from an Oversight Agency stating that the Remedial Work performed was adequate in the remediation of Hazardous Materials at the Brownfield Infill Project.
- (c) “Brownfield Remediation Final Report” means a written document that includes, but is not limited to:
 - (1) Certification that the Borrower or Grantee implemented the final remedy in accordance with the approved Cleanup Plan, and that the work was done in accordance with all applicable laws and regulations.
 - (2) Certification that the Brownfield Infill Project has been completed in compliance with the California Environmental Quality Act (CEQA) (Public Resources Code Sections 21000-21178) and the State CEQA guidelines.
 - (3) Provision of a final description of the Remedial Work conducted on the Brownfield Infill Project, including but not limited to:
 - (A) A description of the Remedial Work conducted on the Brownfield Infill Project;
 - (B) Copies of all necessary permits relating to the Brownfield Infill Project;
 - (C) Copies of the original and amended versions of the approved Cleanup Plan; and
 - (D) A description of the public outreach conducted relating to the Brownfield Infill Project.
 - (4) Provision of a copy of the Brownfield Remediation Completion Document the Borrower or Grantee received from the appropriate Oversight Agency.

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- (5) Where the remediation and/or Cleanup Plan includes Ongoing Operation and Maintenance, provision of a copy of a plan, approved by the Oversight Agency to ensure that the required mitigation measure will remain in operation for the required time and a copy of the agreement creating a trust or escrow account for the funds.
- (d) “Completed Infill Development Project,” “Completion of the Infill Development Project,” or “Complete the Infill Development Project” means the point at which the development of the Brownfield is completed, and the Applicant has received a certificate of occupancy, or its equivalent from the appropriate local public agency.
- (e) “Completed Infill Development Project Report” means a report submitted to the Strategic Partner which includes the Applicant’s certification of a Completed Infill Development Project which will include, but is not limited to:
- (1) A description of the Completed Infill Development Project, including a comparison to the Applicant’s description pursuant to Section 8102.2;
 - (2) A certificate of occupancy, or the equivalent building permit or legal document from the appropriate local government agency; and
 - (3) A copy of the Regulatory Agreement or Recorded Covenant, if applicable.
- (f) “Eligible Brownfield Infill Project Cost” means costs associated with the removal or abatement of Hazardous Materials and Remedial Work related to the Cleanup Plan, pursuant and in accordance with Health and Safety Code Section 44526(h)(1), including, but not limited to:
- (1) Cleanup, mitigation, remediation, mid-project assessment and characterization, and other costs, including development costs as required by the Oversight Agency;
 - (2) Technical Assistance;
 - (3) Governmental oversight of Remedial Actions;
 - (4) No more than twenty percent (20%) of the requested Infill Loan or Infill Grant amount may be spent on environmental insurance.
 - (5) Capitalized Ongoing Operation and Maintenance Costs required by the Oversight Agency as part of the Cleanup Plan.
- (g) “Grantee” means an Applicant whose Infill Application has been approved and who has executed an Infill Grant Agreement.
- (h) “Infill Application” means a form provided by the Authority requiring provision of the information referred to in Section 8102.2.
- (i) “Infill Area” means a contiguous area that has been previously developed that is located within established urban and/or rural neighborhoods or communities, where those

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neighborhoods or communities are already served with streets, water, sewer and other public services.

- (j) “Infill Development Project” means a development project within an Infill Area, consistent with Regional and Local Land Use Plans, which produces or Promotes Infill Residential Development or Infill Mixed Use Development.
- (k) “Infill Grant” means a grant made in accordance with procedures in Sections 8102.1, and 8102.4.
- (l) “Infill Grant Agreement” means a written agreement for an Infill Grant entered into between:
 - (1) An Applicant and a Strategic Partner; or
 - (2) An Applicant and the Authority, where the Authority has elected to act as a Strategic Partner pursuant to Section 8102.11(d); or
 - (3) An Applicant and the Authority in the event the Strategic Partner is unable to act due to a conflict of interest as defined in the Political Reform Act (Government Code Sections 81000 – 91014);
 - (4) A Strategic Partner and the Authority pursuant to Section 8102.12.
- (m) “Infill Loan” means a loan made in accordance with the procedures in Sections 8102.1 and 8102.4.
- (n) “Infill Loan Agreement” means a written agreement for an Infill Loan entered into between:
 - (1) An Applicant and a Strategic Partner; or
 - (2) An Applicant and the Authority, where the Authority has elected to act as a Strategic Partner pursuant to Section 8102.11(d); or
 - (3) An Applicant and the Authority in the event the Strategic Partner is unable to act due to a conflict of interest as defined in the Political Reform Act (Government Code Sections 81000 – 91014);
 - (4) A Strategic Partner and the Authority pursuant to Section 8102.12.
- (o) “Ineligible Brownfield Infill Project Costs” includes, but is not limited to:
 - (1) Costs not authorized by Health and Safety Code Section 44526(h)(1);
 - (2) Monitoring and data collection necessary to apply for, or comply with, environmental permits under other federal and state laws, unless such permit is required by the Cleanup Plan;
- (p) “Mixed Use Development” means a development project including residential use and at

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least one other type of use in a building or set of buildings. Along with residential, included uses can be, but are not limited to some combination of commercial, industrial, office, institutional, or other land uses.

- (q) “Ongoing Operation and Maintenance” means those activities initiated or continued at a Brownfield Infill Project beyond the term of the Infill Loan Agreement or Infill Grant Agreement that is deemed necessary by the Oversight Agency in order to protect public health or safety or the environment, to maintain the effectiveness of the Remedial Work at the Brownfield Infill Project, or to achieve or maintain the standards and objectives established and approved by the Oversight Agency.
- (r) “Promotes Infill Residential Development or Mixed Use Development” means an Infill Development Project that is directly related to and necessary for the development of new Residential Development or Mixed Use Development within an Infill Area and required by the local governing body.
- (s) “Recorded Covenant” means a covenant recorded on an Infill Brownfield Development Project which receives an Infill Grant:
 - (1) Ensuring the affordability of rental units for a term of at least fifty-five (55) years; or
 - (2) Including either a resale restriction for at least thirty (30) years or equity sharing upon resale for ownership units.
- (t) “Regional and Local Land Use Plan(s)” means at least one of the following:
 - (1) The adopted general plan of city, county, or city and county, in which the Infill Development Project resides;
 - (2) The housing element of the city, county, or city and county, in which the Infill Development Project resides;
 - (3) A project area redevelopment plan;
 - (4) A regional blueprint plan;
 - (5) A capital improvement plan; or
 - (6) A regional transportation plan or a transportation corridor plan.
- (u) “Regulatory Agreement” means a recorded legal agreement between the Applicant and a public agency that determines the restrictions and terms of affordability of the housing units created by the Infill Development Project.
- (v) “Remedial Work” means the performance of the activities outlined and required by the Oversight Agency of the Brownfield Infill Project.
- (w) “Residential Development” means a project with the primary purpose of providing housing.

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- (x) “Responsible Party” has the same meaning as set forth in Section 25323.5 of the Health and Safety Code.
- (y) “Supplemental Infill Application” means the provision by the Applicant of the information requested in Section 8102.2 that was not previously provided pursuant to Section 8092, which must include:
 - (1) Certification that the information provided by the Applicant pursuant to Section 8092 is current and updated;
 - (2) The Applicant provides the certification of information pursuant to Section 8102.2(1) and Section 8102.2(m).

§ 8102.1. Infill Grant and Infill Loan Eligibility.

(a) An Applicant shall be eligible for an Infill Grant or Infill Loan when the Strategic Partner determines all of the following:

- (1) The Applicant submits an Infill Application that meets the requirements of Section 8102.2;
- (2) The Applicant proposes a Brownfield Infill Project within an Infill Area;
- (3) The Applicant submits a Remedial Action Plan or Cleanup Plan that has been approved by an appropriate Oversight Agency;
- (4) The Applicant submits an All Appropriate Inquiries report prepared in compliance with the requirements of Title 40, Part 312 of the Code of Federal Regulations;
- (5) The Infill Grant or Infill Loan is requested to fund all or a portion of Eligible Brownfield Infill Project Costs associated with a Brownfield Infill Project;
- (6) The Applicant demonstrates the ability to retain, or is, a development entity;
- (7) If the requested Infill Grant or Infill Loan does not finance all costs of the Brownfield Infill Project, the Applicant identifies an alternative funding source or other financial means to finance the costs of the Brownfield Infill Project not covered by the Infill Grant or Infill Loan;
- (8) The Applicant demonstrates that the Infill Development Project produces or Promotes Infill Residential Development or Mixed Use Development;
- (9) The Applicant demonstrates that the Infill Development Project is consistent with Regional and Local Land Use Plan(s);
- (10) The Applicant identifies the funding sources to develop the Infill Development Project ;

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(11) The Applicant has not been convicted of a felony or misdemeanor involving the regulation of Hazardous Materials, including, but not limited to, a conviction of a felony or misdemeanor under California Health and Safety Code Section 25395.13; and

(12) Any affirmative responses provided in Section 8102.2(1) do not materially impugn the integrity of the Applicant or will not adversely affect the Applicant's ability to comply with these regulations.

(b) The determination of eligibility by a Strategic Partner does not constitute approval of an Infill Application. No award can be made unless the Strategic Partner's recommendation is subsequently ratified by the Authority.

§ 8102.2. Infill Application Content.

An Infill Application shall include all of the following information, and indicate the source of information in circumstances in which the Applicant is not the primary source.

(a) The Applicant's name, address, telephone number, federal tax identification number, type of business or entity, the date the business or entity was established.

(b) Whether the Applicant is applying for an Infill Grant and/or an Infill Loan and the necessary information establishing eligibility for the grant or loan applied for.

(c) The identity of the owner and any operators of the Brownfield, including name, address, and telephone number.

(d) If the Applicant is not the owner of the Brownfield, evidence of:

(1) The Applicant's legal interest in the Brownfield;

(2) Signed permission from the owner of the Brownfield for the Applicant or the Applicant's agent(s) to have access to the Brownfield; and

(3) Signed permission from the owner of the Brownfield for the Applicant or the Applicant's Agent to conduct remediation on the Brownfield.

(e) Information regarding the Oversight Agency and Cleanup Plan, including:

(1) Identification of the Oversight Agency and staff member that is assigned to the Brownfield Infill Project, including name, phone number, address, and email address.

(2) A copy of the draft Cleanup Plan submitted to the Oversight Agency.

(3) A copy of the All Appropriate Inquiries report prepared for the site.

(f) Information regarding the Brownfield for which the Infill Grant or Infill Loan is being

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requested, including:

- (1) A description of the Brownfield Infill Project including:
 - (A) The location of the Brownfield, including the site address, parcel number and area of the Brownfield site;
 - (B) A description of the portions of the Brownfield site which to be dedicated to housing, commercial, retail, open space and other uses;
 - (C) Evidence of the Brownfield's location in an Infill Area;
 - (D) Evidence of the Brownfield's location within an Economically Distressed Community, if applicable;
 - (E) A site layout that includes the location and dimensions of any existing buildings, utilities, and other pertinent features, if available;
 - (F) The current use and zoning of the Brownfield;
 - (G) The current land uses and zoning of adjacent property and the surrounding neighborhood;
 - (H) Identification of Public Infrastructure and its proximity to the Brownfield; and
 - (I) The estimated time period for completion, components, and costs of the Brownfield Infill Project.
- (2) A description of the proposed Infill Development Project including, but not limited to:
 - (A) Evidence the Infill Development Project is consistent with Regional or Local Land Use Plans, or where consistency depends on pending changes to the plans, the Applicant may submit a letter from the local planning director demonstrating the local governing agency's support for the Infill Development Project.
 - (B) Evidence the proposed Infill Development Project Promotes Infill Residential or Mixed Use Development, including:
 - i. The number of housing units to be created;
 - ii. Where affordable housing is proposed, the depth and duration of the affordability of the housing units;
 - iii. Description of area jobs, community amenities and transit;
 - iv. Description of the population the Infill Development Project will serve;
 - v. If the final characteristics of the Infill Development Project are dependent on pending financing, the Applicant must include descriptions of any intended alternative development as it relates to the final characteristics of the Infill Development Project. Where alternative Infill Development Projects are

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submitted, the alternative receiving the lowest score according to the criteria set forth in Section 8102.14 will be used to rank the Infill Application.

- (C) The estimated time period for completion, components, and costs for the Infill Development Project;
- (D) The goals and objectives of, and the benefit to the community from, the Infill Development Project.
- (3) A description of obstacles to the reuse of the Brownfield (e.g., regulatory issues, complex remediation, liability, and/or marketability).
- (4) A listing of the various permits and approvals expected to be required from the local regulatory land use jurisdictions and agencies, including contact information and status of the permit applications.
- (5) A description of community involvement and local government support for the Brownfield Infill Project and Infill Development Project.
- (g) A description of the Applicant's experience managing projects similar to the one proposed and the qualifications of key personnel involved.
- (h) Identification and contact information of the primary persons and their roles and responsibilities for performing and overseeing the activities necessary to complete the Brownfield Infill Project.
- (i) Identification of potential funding sources for:
 - (1) Completion of the Brownfield Infill Project;
 - (2) Completion of the Infill Development Project; and
 - (3) Repayment of the Infill Loan (if applicable).
- (j) A description of requested Eligible Brownfield Infill Project Costs to be financed by the Infill Grant or Infill Loan.
- (k) The requested Infill Grant or Infill Loan amount and term.
- (l) Information regarding bankruptcies, loan defaults, foreclosures, convictions, or criminal, civil or administrative investigations, orders, proceedings, litigation, settlements, or judgments, by or involving the Applicant or to which Applicant is or was a party within the ten years immediately preceding the Infill Application.
- (m) A signed, notarized statement from the Applicant whereby the Applicant agrees to all of the following:

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- (1) To provide Infill Application-related documentation to the Strategic Partner upon request;
- (2) That the Infill Application will be evaluated according to Authority regulations, and that an Infill Grant or Infill Loan is not an entitlement;
- (3) That information submitted to the Strategic Partner or the Authority is subject to the California Public Records Act (Government Code Sections 6250, et seq.); and
- (4) Under penalty of perjury, that all information provided to the Strategic Partner or the Authority is true and correct, and that the Applicant has an affirmative duty to notify the Strategic Partner and Authority of changes causing information in the Infill Application or other submittals to become false.

§ 8102.3. Infill Application Availability, Submission and Strategic Partner Review.

- (a) Infill Applications shall be available from the Authority's staff or from any Strategic Partner. Applicants can obtain a list of Strategic Partners or a copy of the Infill Application by contacting the Authority's staff at the following address: California Pollution Control Financing Authority, 915 Capitol Mall, Room 457, Sacramento, California, 95814 Attention: California Recycle Underutilized Sites (CALReUSE) Program, or by telephoning (916) 654-5610.
- (b) The Applicant shall submit two (2) complete and signed Infill Applications to a Strategic Partner.
- (c) The Infill Application shall contain the information set forth in Section 8102.2.
- (d) The Strategic Partner shall review each Infill Application in accordance with the provisions of this Subarticle. No later than forty-five (45) days following receipt of a completed Infill Application, the Strategic Partner shall in writing either:
 - (1) Notify the Applicant that the Infill Grant Application is being recommended to the Authority for approval;
 - (2) Notify the Applicant that the Infill Loan Application is not being recommended to the Authority and the reasons for the denial; or
 - (3) Notify the Applicant that the Infill Application remains incomplete and describe what additional information the Applicant needs to submit to complete the Infill Application. If the Strategic Partner determines that any document submitted in the Infill Application is not adequate, the Infill Application shall be deemed incomplete.
- (e) If an Applicant has previously been a Borrower under the Site Assessment Program set forth in Subarticle 1 as to the same Brownfield for which funding is now sought under this Subarticle, the Applicant shall submit a Supplemental Infill Application for either an Infill

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Loan or Infill Grant under the same conditions identified in Sections 8102.3(b), 8102(c) and 8102.3(d).

§ 8102.4. Infill Grants and Infill Loans.

- (a) Infill Grants, Infill Loans or combined Infill Grants and Loans to the same entity for the same Brownfield Infill Project shall not be less than fifty thousand (\$50,000) nor more than five million dollars (\$5,000,000). The Authority may waive the minimum or maximum upon a finding that it is in the public interest and advances the purposes of the program.
- (b) Infill Grants may be awarded to Applicants to the extent the proposed Infill Development Project includes not less than fifteen percent (15%) affordable units as set forth in Health and Safety Code Sections 53545.13(c)(2)(C) and 53545.13(c)(2)(D). In addition, the proposed Infill Development Project must meet the density requirements set forth in Health and Safety Code Section 53545.13(c)(3).
- (c) The following Proposed Infill Development Projects may qualify for Infill Grants if they provide substantial:
 - (1) Housing for homeless populations.
 - (2) Housing for special needs populations as defined in Section 10325(g)(3) of Title 4 of the California Code of Regulations.
 - (3) Single Room Occupancy (SRO) housing as defined in Section 10325(g)(3) of Title 4 of the California Code of Regulations.
 - (4) United States Department of Housing and Urban Development Section 202 Supportive Housing for the Elderly.
 - (5) United States Department of Housing and Urban Development Section 811 Supportive Housing for Person with Disabilities.
 - (6) Housing for families with special needs that require temporary relocation.
- (d) Infill Grants shall not be awarded to any responsible party as defined by Section 25323.5 of the California Health and Safety Code.
- (e) The following proposed Infill Development Projects may be eligible for an Infill Loan at an interest rate equal to the Six Month London Interbank Offered Rate (LIBOR) but not less than two percent (2%) which shall be fixed at the time of the execution of the Loan Agreement:
 - (1) Any proposed Infill Development Project that is eligible for an Infill Grant.
 - (2) Any proposed Infill Development Project that Promotes Infill Residential or Mixed Use

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Development.

- (f) Where the specifics of a proposed Infill Development Project are uncertain at the time of application, the Infill Application will be considered as one for an Infill Loan pursuant to paragraph (e). The Infill Loan Agreement will contain a conversion feature that will allow the loan to be converted to an Infill Grant pursuant to paragraphs (b) and (c). Any conversion will be adjusted back to the date of execution and is dependent on a Regulatory Agreement with an appropriate public agency or a Recorded Covenant.
- (g) An Infill Development Project that in and of itself does not produce housing units, but Promotes Infill Residential or Mixed Use Development, will be eligible to receive the financial terms of the Residential Development or Mixed Use Development that the Infill Development Project is related to, and necessary for.
- (h) The Strategic Partner will, upon entering into an Infill Loan Agreement or Infill Grant Agreement, place a lien on the property, which shall be subordinated to private and public lenders where necessary to achieve completion of the Infill Development Project.

§ 8102.5. Infill Grant and Infill Loan Approval.

- (a) Upon recommendation from the Strategic Partner, the Authority may approve an Infill Application. The Strategic Partner may recommend approval upon a determination that:
 - (1) The Infill Application is complete and satisfies the requirements of Section 8102.2;
 - (2) The proposed Infill Development Project meets the requirements of Sections 8102.1 and 8102.4;
 - (3) The Infill Application has been scored according to the criteria set forth in Section 8102.14.
- (b) An Applicant may submit an Infill Application where its Remedial Action Plan or Cleanup Plan has been submitted to, but has not yet been approved by, the appropriate Oversight Agency. Upon receipt of an Infill Application that is complete except for the inclusion of a Remedial Action Plan or Cleanup Plan approved by the appropriate Oversight Agency, the Strategic Partner shall conduct a preliminary review and inform the Applicant the Infill Application is complete contingent upon receipt of a Remedial Action Plan or Cleanup Plan approval from the appropriate Oversight Agency.

Notice from the Strategic Partner that the Infill Application is complete does not constitute approval or create any obligation to fund an Infill Grant or Infill Loan. Where the Infill Grant or Infill Loan is ultimately funded however, any Eligible Brownfield Infill Costs may be reimbursed back to the date the Infill Application was deemed complete by the Strategic Partner.

- (c) Upon approval of an Infill Application by the Authority, the Strategic Partner shall notify the

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Applicant by a letter committing the Authority to provide Infill Grant or Infill Loan funds so long as the Applicant strictly complies with the terms and conditions contained therein. The commitment letter shall include at least all of the following:

- (1) Name of the Applicant and any guarantor;
- (2) Amount and term of the Infill Grant or Infill Loan;
- (3) A description of Eligible Brownfield Infill Costs to be financed by the Infill Grant or Infill Loan;
- (4) Interest rate, if applicable;
- (5) A requirement that any evidence described in Section 8102.2 as being expected prior to the disbursement of loan proceeds shall be received as a condition to disbursement of Infill Grant or Infill Loan proceeds;
- (6) A description of the disbursement process, including a statement that Infill Grant or Infill Loan proceeds shall be disbursed on a reimbursement basis;
- (7) Insurance requirements, if any;
- (8) Conditions and covenants;
- (9) The date when the commitment expires;
- (10) A statement that the Authority reserves the right to modify or cancel the commitment upon failure of the Applicant to execute a Infill Grant Agreement or Infill Loan Agreement that includes all of the terms and conditions set forth in the commitment letter, or if the Authority or the Strategic Partner becomes aware of any material fact which, if known at the time of Infill Grant or Infill Loan review or approval, would have resulted in the Infill Application not being approved, including but not limited to:
 - (A) A determination that the Infill Application was prepared incorrectly, contains incorrect information or omits required information; or
 - (B) Any change in business circumstances that would negatively affect the Applicant's ability to repay the Infill Loan or complete the Infill Development Project.
- (11) A Commitment Letter will reserve the Applicant's award until the Cleanup Plan or Remedial Action Plan is approved by the Oversight Agency and the necessary Infill Grant Agreement or Infill Loan Agreement can be executed.
- (12) A Commitment Letter is valid for twelve (12) months. If the Applicant's Cleanup Plan or Remedial Action Plan has not been approved by an Oversight Agency upon expiration of the Commitment Letter;

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- (A) The Authority may extend the term of any commitment letter upon a finding that it is in the public interest and advances the purposes of the program.
- (B) The award may be deemed to be unencumbered and will revert to the Authority.
- (C) The Applicant may be required to re-submit its Infill Application to be considered for any subsequent Infill Grant or Infill Loan.

§ 8102.6 Infill Grant and Infill Loan Terms.

- (a) The terms and conditions of an Infill Grant or Infill Loan shall be set forth in an Infill Grant Agreement or Infill Loan Agreement executed by the Grantee or Borrower and shall include, at a minimum, all of the following terms and conditions:
 - (1) A requirement that the Grantee or Borrower will submit a letter from the Oversight Agency approving the Cleanup Plan before any funds will be disbursed;
 - (2) A requirement that the first draw on the funds be made within twelve (12) months of the execution of the Infill Grant Agreement or Infill Loan Agreement;
 - (3) A requirement that all Remedial Work will be completed within the term of the Infill Grant or Infill Loan, not to exceed six (6) years from the time of the first draw;
 - (4) A provision allowing the Strategic Partner extend term of the Infill Loan or Infill Grant by as much as two years as set forth in Section 8102.8;
 - (5) Disbursement and repayment procedures pursuant to Section 8102.7;
 - (6) A provision that any unused Infill Grant or Infill Loan funds shall revert to the Authority at the end of the term of the Infill Grant Agreement or Infill Loan Agreement;
 - (7) A certification by the Grantee or Borrower that the Infill Development Project meets the eligibility requirements of Section 8102.1(a) and a description of the Infill Development Project that conforms to Section 8102.2(f)(2).
 - (8) Agreement that upon Completion of the Infill Development Project the Grantee or Borrower will submit a Completed Infill Development Project Report.
 - (9) Agreement to comply with the Authority's program statutes and regulations;
 - (10) Agreement that the Grantee or Borrower is and will remain for the term of the Infill Loan or Infill Grant in compliance with all laws regulations and rules applicable to the project.

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- (11) Agreement that the Brownfield Infill Project and the Infill Development Project will comply with the California Environmental Quality Act (Public Resources Code Sections 21000, et seq.) and the State CEQA guidelines contained in Sections 15000, et seq. of Title 14 of the California Code of Regulations.
- (12) Agreement that the funds of the Infill Loan or Infill Grant will be used only for Eligible Brownfield Infill Project Costs as defined in Section 8102(f).
- (13) Agreement that the Grantee or Borrower will work with the Oversight Agency identified in the Infill Grant Agreement or Infill Loan Agreement.
- (14) Certification that the Grantee or Borrower has and will maintain any and all required insurance policies for the term of the Infill Loan or Infill Grant.
- (15) Agreement that the Grantee or Borrower will defend, indemnify and hold harmless the Authority and the State, and all officers, trustees, agents and employees of the same, from and against any and all claims, losses, costs, damages, or liabilities of any kind or nature, whether direct or indirect, arising from or relating to the Infill Grant or Infill Loan, the Brownfield Infill Project, the Infill Development Project or this program, including but not limited to, any and all claims, losses, costs, damages, or liabilities arising from or related to the presence, release, threatened release, investigation or remediation of Hazardous Material of the Brownfield Infill Project;
- (16) Agreement to comply with laws outlawing discrimination including, but not limited to those prohibiting discrimination because of sex, race, color, ancestry, religion, creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer or genetic characteristics), sexual orientation, political affiliation, position in a labor dispute, age, marital status, and denial of statutorily-required employment-related leave;
- (17) Agreement that continued compliance with program requirements is the responsibility of the Grantee or Borrower;
- (18) Agreement that the Grantee or Borrower will timely provide all required reports and notices to the Strategic Partner during the term of the Infill Loan or Infill Grant and until Completion of the Infill Development Project;
- (19) Agreement that the Grantee or Borrower will provide or cause to be provided to the Strategic Partner a copy of the Brownfield Remediation Final Report within 30 days of completion of the Brownfield Remediation Final Report;
- (20) Agreement that, except as provided by Section 8102.6(a)(25)(E), Grantee or Borrower's failure to comply with any law, regulation or rule applicable to the project, or failure to deliver any certification required by Section 8102.6 within the time period required, will constitute an event of default under the Infill Grant or Infill Loan Agreement resulting in the principal and any interest of an Infill Loan becoming

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immediately due and payable or the seizure of any unexpended Infill Grant funds and the immediate conversion of expended Infill Grant funds becoming subject to the terms of an Infill Loan pursuant to Section 8102.4 which shall then be immediately due and payable.

- (21) Agreement by the Grantee or Borrower to comply with all applicable laws, including but not limited to statutes, rules, regulations, administrative orders and agreements, and judicial orders or consent decrees that apply to the Brownfield Infill Project, related to or arising from assessment, characterization and remediation of a Brownfield, including but not limited to those requiring the preparation of a description of Hazardous Material on the Brownfield and those requiring oversight and supervision to assure the adequacy of any Feasibility Study, Remedial Investigation, Remedial Action Plan, or Remedial Work by the Oversight Agency;
- (22) Agreement that upon being informed, or finding, that information supplied by the Grantee or Borrower, any person acting on behalf of the Grantee or Borrower, or any team member identified in the Infill Application, is false or no longer true, and the Grantee or Borrower has not notified the Authority or the Strategic Partner, the Authority may invoke the default provisions or false information provisions, as it deems appropriate.
- (23) Agreement that upon a finding by the Strategic Partner or the Authority that the Borrower or Grantee has provided false material information to the Strategic Partner or Authority may result in any of the following:
 - (A) Acceleration of repayment of the Infill Loan or conversion of the Infill Grant to an Infill Loan;
 - (B) The Grantee or Borrower may be fined up to twenty-five percent (25%) of the Infill Loan or Infill Grant award;
 - (C) Notification of state and local entities of Grantee or Borrower’s provision of false information; or
 - (D) The Borrower or Grantee being ineligible for future financing under the CALReUSE program.
- (24) Provision that the Borrower or Grantee will be deemed in default of its Infill Grant Agreement or Loan Agreement under any of the following conditions:
 - (A) Failure of the Borrower or Grantee to comply with the terms of the Infill Loan Agreement or Infill Grant Agreement;
 - (B) Failure of the Borrower or Grantee to complete the Infill Development Project, as described in the Infill Grant Agreement or Infill Loan Agreement, within the term of the Infill Grant Agreement or Infill Loan Agreement, including any extensions;

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or

- (C) Changes to the Infill Development Project such that it no longer meets the eligibility criteria.
- (25) Agreement that upon default, any of the Borrower or Grantee may be subject to any of the following:
 - (A) A requirement that the Borrower or Grantee repay the loan or grant plus 10% per annum;
 - (B) The Strategic Partner may invoke its lien on the property;
 - (C) The Authority may inform other governmental agencies of the default;
 - (D) The Authority may consider the Borrower or Grantee ineligible for future financing under the program; or
 - (E) The Authority may waive any default upon a finding that it is in the public interest and advances the purposes of the program.
- (26) A Provision that the Borrower or Grantee will have a reasonable opportunity to cure before the Borrower or Grantee is deemed in default.
- (27) A provision binding the Grantee to make best efforts to collect from any Responsible Party and to convey any payments received to refund the Infill Grant.
- (28) Any other provisions agreed to by the parties.

§ 8102.7. Conditions of Funds Disbursement, Funds Disbursement and Loan Repayment Procedures.

- (a) Conditions of Funds Disbursement. The Strategic Partner shall not disburse Infill Grant or Infill Loan funds unless all of the following conditions are met:
 - (1) All other funds for completing the Brownfield Infill Project are identified and committed for use;
 - (2) All terms and conditions contained in the commitment letter described in Section 8102.5(f) are satisfied;
 - (3) Execution of an Infill Loan Agreement, Infill Grant Agreement, promissory note and any other documents, as required, and compliance with all conditions precedent to disbursement contained in the Infill Grant Agreement or Infill Loan Agreement.

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- (b) Funds Disbursement. The Strategic Partner shall cause funds to be disbursed as follows:
- (1) The Borrower or Grantee shall sign and submit to the Strategic Partner a signed invoice documenting the service or procedure performed from entities providing materials and services for Eligible Brownfield Infill Costs covered by the Infill Loan Agreement or Infill Grant Agreement.
 - (2) Upon receipt of the signed invoice, review and a determination of Eligible Brownfield Infill Costs, the Strategic Partner, shall authorize the disbursement of Infill Loan or Infill Grant funds to the Applicant from the funds of the Authority committed by the Authority for the Infill Grant or Infill Loan.
 - (3) Disbursements shall be made no more frequently than once per calendar month.
- (c) Loan Repayment Procedures. The Strategic Partner shall cause any Infill Loan repayment proceeds received from the Borrower to be delivered promptly upon receipt by the Strategic Partner to the following entities in the following order:
- (1) First, to the Authority until the funds advanced by the Authority for the Infill Loan, including any accrued interest, are repaid in full, and
 - (2) Second, to the Strategic Partner to repay any loan to the Borrower by the Strategic Partner in connection with the Brownfield Infill Project, if applicable.

§ 8102.8 Infill Loan and Infill Grant Extensions.

- (a) Infill Loan or Infill Grant Extensions. Upon written request received from the Applicant, the term of an Infill Loan or Infill Grant may be extended by the Strategic Partner if both of the following conditions are met:
- (1) The Applicant clearly demonstrates that it is unable to complete the Brownfield Infill Project or the Infill Development Project by the end of the Infill Loan or Infill Grant term, and
 - (2) The Applicant clearly demonstrates how the Brownfield Infill Project or Infill Development Project can be completed in the additional time requested.
- (b) No Infill Loan or Infill Grant may be extended for more than two years except by the Authority which may grant additional extensions upon a finding that it is in the public interest and furthers the purposes of the program.

§ 8102.9. Strategic Partner Reports and Records Retention.

- (a) A Strategic Partner shall provide the following quarterly reports to the Authority:
- (1) Applications Received Report. This report shall include the following information:

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- (A) A listing of identified Brownfield Infill Projects for which Applications have been submitted and for which funding is anticipated during the next six months;
 - (B) Identification of whether the proposed Brownfield Infill Project meets the various criteria outlined in Section 8102.1(a);
 - (C) Identification of whether the Strategic Partner is the Applicant;
 - (D) Requested award amount and type;
 - (E) Description of the anticipated Infill Development Project, including the total number of housing units created, the number of affordable units and the depth and duration of affordability;
 - (F) Indication of whether the Brownfield Infill Project is located within an Economically Distressed Community;
 - (G) Anticipated timeline of completion of the Infill Brownfield Project;
 - (H) Anticipated timeline of completion of the Infill Development Project;
 - (I) Previous use of the Brownfield and known contaminants; and
 - (J) Applicant's identified Oversight Agency.
- (2) Request for Funds Report. This report shall include the following information for each Brownfield Infill Project to be funded during the next three months:
- (A) A description of the Brownfield Infill Project;
 - (B) Identification of whether the Brownfield Infill Project meets the various criteria and priorities outlined in Section 8102.1(a);
 - (C) Identification of whether the Strategic Partner is the Applicant;
 - (D) Requested Infill Loan or Infill Grant amount for the Brownfield Infill Project;
 - (E) Description of Eligible Brownfield Infill Project Costs to be funded for the Brownfield Infill Project.
 - (F) Proposed Infill Loan or Infill Grant term.
 - (G) Identification of the combined total amount of Infill Grant or Infill Loan funds requested for the quarter.

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- (3) Brownfield Infill Projects Status Report. This report shall describe the current status of each Brownfield Infill Project for which an Infill Loan and/or Infill Grant (including an Infill Loan and/or Infill Grant for which the Strategic Partner is the Applicant) remains outstanding including:
- (A) A description of activities performed at the Brownfield Infill Project for the previous three months.
 - (B) A statement of whether or not the Strategic Partner has received the Brownfield Remediation Final Report and, if so, a summary of the Brownfield Remediation Final Report that was received during the previous three months.
 - (C) A statement of whether the Strategic Partner has received the information required by Section 8102.6.
- (4) Outstanding Infill Loans and Infill Grants Report. This report shall describe the current status of every Infill Loan and Infill Grant (including those where the Strategic Partner is the Borrower or Grantee) including:
- (A) Name of the Borrower or Grantee;
 - (B) Whether the award is an Infill Grant or an Infill Loan;
 - (C) If an Infill Loan, the interest rate on the Infill Loan;
 - (D) Whether the Borrower or Grantee is a Small Business;
 - (E) Identification of whether the Borrower or Grantee is a Strategic Partner;
 - (F) Name of Brownfield Infill Project;
 - (G) Street Address of the Brownfield;
 - (H) Draws on outstanding Infill Loans and Infill Grants;
 - (I) Current payments;
 - (J) Total Infill Loan repayment status;
 - (K) If the term of any Infill Loan or Infill Grant is extended:
 - i) The date of the extension; and
 - ii) The current Infill Loan or Infill Grant amount and term.
- (5) Other reports and documents as reasonably requested by the Authority.

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- (b) Brownfield Infill Development Project Status Report. A Strategic Partner shall provide an annual report to the Authority that shall describe the current status of the development of each Brownfield Infill Project for which an Infill Loan or Infill Grant (including an Infill Loan or Infill Grant where the Strategic Partner is the Applicant) was made including:
 - (1) A description of the Infill Development Project, including, but not limited to the total number of residential units, densities, the number of affordable units and the depth and duration of the affordability.
 - (2) A detailed description of development activities performed at the Brownfield for the previous year.
 - (3) Upon completion of the Infill Development Project, a description of the final use for the property.
- (c) Records Retention. A Strategic Partner shall retain the Application, all documents that were submitted by the Applicant with the Application, and all documents pertaining to the Infill Loan or Infill Grant and the Brownfield Infill Project for at least six years after the later of the termination of the Infill Loan or Infill Grant, or the completion of actions and the resolution of all issues, that arise as a result of any litigation, claim, negotiation or audit concerning the Infill Loan Agreement or Infill Grant Agreement executed pursuant to Section 8102.6.

§ 8102.10 Allocation of funds to Strategic Partners

- (a) In allocating funds to Strategic Partners, 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.
- (b) Once each quarter following the receipt of the Applications Received Reports from the Strategic Partners, the Authority shall review the Applications Received Reports and make an allocation to each Strategic Partner that shall remain in effect for six (6) months. Upon expiration of the allocation, any unused allocation shall revert to the Authority.

§ 8102.11. Strategic Partner Eligibility and Selection Criteria.

- (a) A governmental agency or public or private entity acting alone or in combination with others, shall be eligible to participate as a Strategic Partner and Strategic Partners will be selected by the Authority based upon the following eligibility and selection criteria:
 - (1) Demonstrated ability to provide Technical Assistance to a Development Entity;
 - (2) Demonstrated understanding of the economic and real estate development processes specifically as applied to proposed Brownfield Infill Projects and Infill Development

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Projects:

- (3) Demonstrated understanding of environmental assessment and remediation requirements;
 - (4) Demonstrated understanding of Brownfield regulatory and reporting requirements;
 - (5) Demonstrated experience in evaluating the economic viability of proposed Brownfield Infill Projects and Infill Development Projects; and
 - (6) Demonstrated partnership experience.
- (b) The services to be provided by a Strategic Partner pursuant to Section 8090(af) hereof shall be provided as an independent contractor pursuant to a written agreement to be entered into by and between the Strategic Partner and the Authority.
 - (c) An entity may not act as a Strategic Partner as to any Brownfield for which the entity is a responsible party as defined by Section 25323.5 of the California Health and Safety Code. However, as to any such Brownfield, the entity may be an Applicant, or Borrower, and the Authority shall be the Strategic Partner with respect to the Infill Application, Infill Loan.
 - (d) In addition to or in lieu of contracting with a Strategic Partner, the Authority may at any time elect to act as a Strategic Partner in providing all of the services set forth in Section 8090(af).

§ 8102.12. Strategic Partner as Applicant, Borrower, and/or Grantee.

- (a) Notwithstanding any decision to act as a Strategic Partner pursuant to Section 8102.11(d), the following shall apply in all cases where the Strategic Partner is the Applicant, Borrower or Grantee or in the event the Strategic Partner is unable to act relative to an Applicant due to a conflict of interest as defined in the Political Reform Act (Government Code Sections 81000 through 91014):
 - (1) The Authority shall be the Strategic Partner as to the Infill Application and Infill Grant or Infill Loan.
 - (2) If the Authority is the Strategic Partner, the Executive Director shall be authorized to:
 - (A) Determine whether the Applicant shall be eligible for an Infill Loan or Infill Grant pursuant to Section 8102.1.
 - (B) Review the Infill Application and notify the Applicant pursuant to Section 8102.3 and 8102.5.
 - (C) Execute the Infill Loan Agreement or Infill Grant Agreement pursuant to Section 8102.4 and 8102.6.
 - (D) Cause funds to be disbursed to the Applicant pursuant to Section 8102.7.

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(E) Determine whether an Infill Loan or Infill Grant shall be extended pursuant to Section 8102.8.

§ 8102.13. Technical Assistance.

Upon request of an Applicant, Borrower, or Grantee the Strategic Partner may provide Technical Assistance to assist in the remediation of a Brownfield Project.

§ 8102.14. Scoring Criteria.

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 (i.e., encroachment, ROW, 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

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- (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.

§ 8102.15. Geographic Distribution Targets.

The Brownfield remediation program has the following targets for geographical distribution of funds:

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