

**CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY  
CALIFORNIA RECYCLE UNDERUTILIZED SITES PROGRAM  
Executive Summary**

**ITEM.** California Recycle Underutilized Sites Program   **Date Requested:** February 13, 2008  
(CALReUSE Program)

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

***Summary of Requested Board Action.***

Staff submitted the CALReUSE Program’s emergency regulation – approved by the Authority at the December 18, 2007 Board meeting – to the Office of Administrative Law (OAL) in mid-January. While conducting its review of the emergency regulation package, OAL identified several issues including minor terminology, syntax, and the clarity of specific provisions that needed to be addressed in the emergency rulemaking process. Staff has attended to these concerns and OAL has determined that these specific modifications require Board approval.

The modifications to the emergency regulations made subsequent to the December 18, 2007 Board approval are highlighted in red text on the attached copy of the emergency regulations. The most significant changes include:

- Definitions, Section 8102(h). Removal of the word “form” from the definition of “infill application” and all other direct and indirect references to a specific “application form.” This modification is necessary because the Authority is not providing, nor requiring Strategic Partners to utilize, a specific application form within the regulations.
- Infill Grant and Infill Loan Terms, Section 8102.6 (a)(23)(B) and (a)(25)(E). Removal of the word “fine” from the provision describing the potential 25 percent penalty for borrowers/grantees that provide material false information. OAL argues that Government Code section 11145 prohibits governmental agencies from charging fines. Staff has modified the provision of material false information by adding the potential trigger of Infill Loan/Infill Grant Default (Section 8102.6 (a)(23)(B)), and expanding the default provision to include a one time payment of 25% of the award amount (Section 8102.6 (a)(25)(E)).

Staff believes these modifications adequately address the issues raised by OAL to successfully complete the emergency rulemaking process, and will continue to work with the agency.

***Timeline.***

February

- Submit Emergency Regulations to Office of Administrative Law (OAL). On Day 10—Emergency Regulations in effect for 6 months (180 days) and the modifications to the Site Assessment Program will be enacted.
- Advertise Request for Proposals (RFP) for Strategic Partners & Trustee

March/April

- CPCFA approves Strategic Partner selection.

April/May

- Strategic Partners on board.
- CPCFA approves Trustee selection.

May/June

- Trustee on board.
- First loans/grants anticipated to be financed.

***Attachment.***

Text of Regulations. ATTACHMENT A (modified text highlighted in red)

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

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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 (CALReUSE) Program**

**To Be Presented to the Authority for Ratification  
at the February 13, 2008 Board Meeting**

**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.

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(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;~~
- ~~(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.)

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(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.

(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) The costs of the Oversight Agency and other governmental oversight incurred by the borrower that is related to the 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.~~

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(n 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.

(o 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.

(p 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.

(q 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

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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:~~

- ~~(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.

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(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 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~~ by the 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).

Note: Authority cited: Section 44520, Health and Safety Code. Reference: Sections 25260(d), 25548.1, 33000 et seq., 33030, 44500 et seq., 44501, 44502, 44504.1, 44505,



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44506 44507, 44508, 44509, 44520, 44525.7, 44526(h), 44526(i), 44537.5, 44548(a), 44548(b), 53545, ~~and~~ 53545.14, 33000 et seq., and 33030 of California Health and Safety Code; Section 7105 et seq., 7073, 7073.8, and 7079 of California Government Code; Public Law 100 –526; 40 CFR, Section 312.10; Section 1392 and 1400 E of Title 26 and Section 9601(20)(F) of Title 24 of the United States Code; Section 8020 of Title 4 of the California Code of Regulations;

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**§ 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
- (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.~~

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~~(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.~~

Note: Authority cited: Section 44520, Health and Safety Code. Reference: Sections 25395.13, 44501, 44502, 44504.1, 44505, 44507, 44508, 44520, 44525.7, 44526(h), | 44526(i), 44537.5, 44548(a), 44548(b), 53545 and 53545.14, Health and Safety Code.

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**§ 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).
- (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 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;

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- (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.
  - (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.

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- (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.

Note: Authority cited: Section 44520, Health and Safety Code. Reference: Sections 44501, 44502, 44504.1, 44505, 44507, 44508, 44520, 44525.7, 44526(h), 44526(i), 44537.5, 44548(a), 44548(b), 53545 and 53545.14, Health and Safety Code.

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**§ 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) 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.

Note: Authority cited: Section 44520, Health and Safety Code. Reference: Sections 44501, 44502, 44504.1, 44505, 44507, 44508, 44520, 44525.7, 44526(h), 44526(i), 44537.5, 44548(a), 44548(b), 53545 and 53545.14, Health and Safety Code.

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§ 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.~~

(A) First, for Brownfields not 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 for Brownfields that are 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)) for which no viable responsible party has been identified:

i. First, to Brownfields located in Economically Distressed Communities;

ii. Second, to Brownfields located in areas with existing Public Infrastructure; and

iii. Third, to other Brownfields.

(B) Second, for Brownfields that are 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)) and for which a viable responsible party has been identified:

i. First, to Brownfields located in Economically Distressed Communities;

ii. Second, to Brownfields located in areas with existing Public Infrastructure; and



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iii. Third, to other Brownfields.

- (b) For purposes of this section, Responsible Party means any entity identified in ~~defined~~ as a responsible party in 42 U.S.C. Sections 9607(a)(2), 9607(a)(3) and 9607(a)(4).
- (c) 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.
  - (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.

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Note: Authority cited: Section 44520, Health and Safety Code. Reference: Sections 44501, 44502, 44504.1, 44505, 44507, 44508, 44520, 44525.7, 44526(h), 44526(i), 44537.5, 44548(a), 44548(b), 53545 and 53545.14, Health and Safety Code; Sections 9605(a)(8)(B), 9607(a)(2), 9607(a)(3) and 9607(a)(4) of Title 42 of the United States Code;

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**§ 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:
  - (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;

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- (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;
- (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.

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- (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.

Note: Authority cited: Section 44520, Health and Safety Code. Reference: Sections 44501, 44502, 44504.1, 44505, 44507, 44508, 44520, 44525.7, 44526(h), 44526(i), 44537.5, 44548(a), 44548(b), 53545 and 53545.14, Health and Safety Code.

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**§ 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:
- (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.

Note: Authority cited: Section 44520, Health and Safety Code. Reference: Sections 44501, 44502, 44504.1, 44505, 44507, 44508, 44520, 44525.7, 44526(h), 44526(i), 44537.5, 44548(a), 44548(b), [53545](#) and [53545.14](#), Health and Safety Code.

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**§ 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.
- (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).

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

Note: Authority cited: Section 44520, Health and Safety Code. Reference: Sections 44501, 44502, 44504.1, 44505, 44507, 44508, 44520, 44525.7, 44526(h), 44526(i), 44537.5, 44548(a), 44548(b), 53545 and 53545.14, Health and Safety Code.



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**§ 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.
  - (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.

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- (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.
  - (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.

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- (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).

Note: Authority cited: Section 44520, Health and Safety Code. Reference: Sections 44501, 44502, 44504.1, 44505, 44507, 44508, 44520, 44525.7, 44526(h), 44526(i), 44537.5, 44548(a), 44548(b), 53545 and 53545.14, Health and Safety Code.

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§ 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.

~~(c) 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).~~

Note: Authority cited: Section 44520, Health and Safety Code. Reference: Sections 44501, 44502, 44504.1, 44505, 44507, 44508, 44520, 44525.7, 44526(h), 44526(i), 44537.5, 44548(a), 44548(b), 53545 and 53545.14, Health and Safety Code.

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**§ 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.

Note: Authority cited: Section 44520, Health and Safety Code. Reference: Sections [25323.5](#), 44501, 44502, 44504.1, 44505, 44507, 44508, 44520, 44525.7, 44526(h), 44526(i), 44537.5, 44548(a), 44548(b), [53545](#) and [53545.14](#), Health and Safety Code.

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**§ 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~~.
  - (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~~.

Note: Authority cited: Section 44520, Health and Safety Code. Reference: Sections 44501, 44502, 44504.1, 44505, 44507, 44508, 44520, 44525.7, 44526(h), 44526(i), 44537.5, 44548(a), 44548(b), 53545 and 53545.14, Health and Safety Code; Sections 81000 – 91014 of the California Government Code.

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**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~~ 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.
  - (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 ~~that to~~ ensures that the required mitigation measure will remain in operation for

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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) The Costs of the Oversight Agency and other Governmental oversight incurred by the Borrower and/or Grantee that is associated with the Remedial Actions related to the Brownfield Infill Project;
  - (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 the provision by the Applicant of the information requested a form provided by the Authority requiring provision of the information referred to in Section 8102.2.



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- (i) “Infill Area” means a contiguous area that has been previously developed that is located within an established urban and/or rural neighborhoods or communities, where those 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);

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- (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 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

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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.
- (x) “Responsible Party” means any entity ~~identified defined as a responsible party~~ in 42 U.S.C. Sections 9607(a)(2), 9607(a)(3) and 9607(a)(4).
- (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(l) and Section 8102.2(m).

Note: Authority cited: Section 44520, Health and Safety Code. Reference: Sections 44501, 44502, 44504.1, 44505, 44507, 44508, 44520, 44525.7, 44526(h), ~~44526(h)(1), 44526(i), 44537.5, 44548(a), 44548(b), 53545 and 53545.14, Health and Safety Code; Sections 21000-21178 of the California P-ublic Resources Code; Sections 81000 – 91014 of the California Government Code; Sections 9607(a)(2), 9607(a)(3) and 9607(a)(4) of Title 42 of the United States Code;~~

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**§ 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 ;
- (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(l) do not materially impugn the integrity of the Applicant or will not adversely affect the Applicant’s ability to comply with these regulations.

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(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.

Note: Authority cited: Section 44520, Health and Safety Code. Reference: Sections [25395.13](#), 44501, 44502, 44504.1, 44505, 44507, 44508, 44520, 44525.7, 44526(h), 44526(i), 44537.5, 44548(a), 44548(b), [53545](#) and 53545.14, Health and Safety Code; [Title 40, Part 312 of the Code of Federal Regulations](#)

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**§ 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 ~~in compliance with the requirements of Title 40, Part 312 of the Code of Federal Regulations.~~ ~~for the site.~~

(f) Information regarding the Brownfield for which the Infill Grant or Infill Loan is being 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~~ will be dedicated to housing, commercial, retail, open space and other uses;

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- (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 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;

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- (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 relating to land development or brownfield cleanup, 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:
  - (1) To provide Infill Application-related documentation to the Strategic Partner upon request;



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- (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.

Note: Authority cited: Section 44520, Health and Safety Code. Reference: Sections 44501, 44502, 44504.1, 44505, 44507, 44508, 44520, 44525.7, 44526(h), 44526(i), 44537.5, 44548(a), 44548(b), 53545 and 53545.14, Health and Safety Code; Government Code Sections 6250, et seq.; Title 40, Part 312 of the Code of Federal Regulations

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**§ 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 information regarding application procedures 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 Loan or Infill Grant under the same conditions identified in Sections 8102.3(b), 8102(c) and 8102.3(d).

Note: Authority cited: Section 44520, Health and Safety Code. Reference: Sections 44501, 44502, 44504.1, 44505, 44507, 44508, 44520, 44525.7, 44526(h), 44526(i), 44537.5, 44548(a), 44548(b), 53545 and 53545.14, Health and Safety Code.

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**§ 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.
- (e) In awarding Infill Grants the Authority shall prioritize applications into tiers as follows:
  - (1) Sites not 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)) and sites that are 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)), for which no viable Responsible Party has

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been identified shall be accorded first priority.

- (2) Sites 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)) for which a viable Responsible Party has been identified shall be accorded second priority.
  
- (f) 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 Development.
  
- (g) 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.
  
- (h) 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.
  
- (i) The Strategic Partner will, upon entering into an Infill Loan Agreement or Infill Grant Agreement, place a lien on the property **on the Authority's behalf**, which shall be subordinated to private and public lenders where necessary to achieve completion of the Infill Development Project.

Note: Authority cited: Section 44520, Health and Safety Code. Reference: Sections 44501, 44502, 44504.1, 44505, 44507, 44508, 44520, 44525.7, 44526(h), 44526(i), 44537.5, 44548(a), 44548(b), **53545, 53545.13(c)(2)(C), 53545.13(c)(2)(D), 53545.13(c)(3)** and 53545.14, Health and Safety Code; **California Code of Regulations Title 4 Sections 10325(g)(3); Public Law 101-625 Section 811 and Section 202; 42 U.S.C. Section 9605(a)(8)(B);**

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**§ 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 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;

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- (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 an 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:
  - (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.

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Note: Authority cited: Section 44520, Health and Safety Code. Reference: Sections 44501, 44502, 44504.1, 44505, 44507, 44508, 44520, 44525.7, 44526(h), 44526(i), 44537.5, 44548(a), 44548(b), 53545 and 53545.14, Health and Safety Code.

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**§ 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 ~~to extend~~ the 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.
  - (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.



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- (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 immediately due and payable or the seizure of any unexpended Infill Grant funds and the immediate conversion of expended Infill

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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) A finding that the Borrower or Grantee is in default of its Infill Grant Agreement or Infill Loan Agreement and may be subject to the provisions of paragraph (a)(25) ~~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

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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; 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(s) or Grantee(s) may be subject to ~~one or more 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)~~ A requirement that the Borrower or Grantee make a one time payment of up to 25 percent of the Infill Loan or Infill Grant award; or

~~(E)~~(F) 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.

Note: Authority cited: Section 44520, Health and Safety Code. Reference: Sections 44501, 44502, 44504.1, 44505, 44507, 44508, 44520, 44525.7, 44526(h), 44526(i), 44537.5, 44548(a), 44548(b), 53545 and 53545.14, Health and Safety Code; Public Resources Code Sections 21000, et seq.; Sections 15000, et seq. of Title 14 of the California Code of Regulations

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**§ 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.
- (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 that 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.

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Note: Authority cited: Section 44520, Health and Safety Code. Reference: Sections 44501, 44502, 44504.1, 44505, 44507, 44508, 44520, 44525.7, 44526(h), 44526(i), 44537.5, 44548(a), 44548(b), 53545 and 53545.14, Health and Safety Code.

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**§ 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.

Note: Authority cited: Section 44520, Health and Safety Code. Reference: Sections 44501, 44502, 44504.1, 44505, 44507, 44508, 44520, 44525.7, 44526(h), 44526(i), 44537.5, 44548(a), 44548(b), 53545 and 53545.14, Health and Safety Code.

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**§ 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:
    - (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;

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- (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.
- (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;



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- (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.
- (b) Brownfield Infill Development Project Status Report. A Strategic Partner shall provide an annual report no later than February 1<sup>st</sup> of each year 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.

Note: Authority cited: Section 44520, Health and Safety Code. Reference: Sections 44501, 44502, 44504.1, 44505, 44507, 44508, 44520, 44525.7, 44526(h), 44526(i), 44537.5, 44548(a), 44548(b), 53545 and 53545.14, Health and Safety Code.

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**§ 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.

Note: Authority cited: Section 44520, Health and Safety Code. Reference: Sections 44501, 44502, 44504.1, 44505, 44507, 44508, 44520, 44525.7, 44526(h), 44526(i), 44537.5, 44548(a), 44548(b), 53545 and 53545.14, Health and Safety Code.

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**§ 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 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).

Note: Authority cited: Section 44520, Health and Safety Code. Reference: Sections 25323.5 44501, 44502, 44504.1, 44505, 44507, 44508, 44520, 44525.7, 44526(h), 44526(i), 44537.5, 44548(a), 44548(b), 53545 and 53545.14, Health and Safety Code.

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

Note: Authority cited: Section 44520, Health and Safety Code. Reference: Sections 44501, 44502, 44504.1, 44505, 44507, 44508, 44520, 44525.7, 44526(h), 44526(i), 44537.5, 44548(a), 44548(b), 53545 and 53545.14, Health and Safety Code; Government Code Sections 81000 through 91014).

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**§ 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.

Note: Authority cited: Section 44520, Health and Safety Code. Reference: Sections 44501, 44502, 44504.1, 44505, 44507, 44508, 44520, 44525.7, 44526(h), 44526(i), 44537.5, 44548(a), 44548(b), 53545 and 53545.14, Health and Safety Code.

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**§ 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 that 30% but greater than 15 % of the total number of units: 5
  - (2) more than 30% but less than 50% of the total number of units: 10 points
  - (3) more than 50% of the total number of units: 15 points
  
- (f) Utilization of Green Building Methods: 5 points
  - (1) LEED Certified: 5 Points
  - (2) Exceeding Title 24 Standards by 30 percent: 5 points
  - (3) A minimum of 60 GreenPoint Rating points: 5 points
  
- (g) The Cleanup Plan for the Brownfield Infill Project does not require Ongoing Operation and Maintenance: 10 points
  
- (h) In tie-breaker situations, projects will be prioritized based on their effective use of Infill Grant or Infill Loan dollars, measured by a ratio of the anticipated cost of the Remediation Plan or Cleanup Plan per residential housing unit created.

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Note: Authority cited: Section 44520, Health and Safety Code. Reference: Sections 44501, 44502, 44504.1, 44505, 44507, 44508, 44520, 44525.7, 44526(h), 44526(i), 44537.5, 44548(a), 44548(b), and 53545.14, Health and Safety Code.

**§ 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%).

Note: Authority cited: Section 44520, Health and Safety Code. Reference: Sections 44501, 44502, 44504.1, 44505, 44507, 44508, 44520, 44525.7, 44526(h), 44526(i), 44537.5, 44548(a), 44548(b), 53545 and 53545.14, Health and Safety Code.

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

February 13, 2008

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 CALReUSE 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 and 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 Director 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.