



January 11, 2008

Ms. Lynn Jacobs, Director
Mr. Chris Westlake, Deputy Director
California Department of Housing & Community Development
1800 Third Street, Suite 400
Sacramento, CA 95814

Re.: COMMENTS TO HCD 'DRAFT' INFILL SET-ASIDE GUIDELINES

Dear Ms. Jacobs and Mr. Westlake,

On behalf of the California Housing Consortium/CHC Institute, I am writing to provide written comments on the 'draft' Infill Set-Aside Guidelines issued by your department on December 26. These comments are the result of discussion among the CHC Policy Leadership Task Force as well as CHC roundtable forums over the past several months involving our diverse private, non-profit, and public sector membership. We have also incorporated our detailed recommendations in the Guideline Comments form as requested by the Department.

As you know, after successfully co-directing the passage of the \$2.85 billion PROP 1C housing bond in 2006, last year we worked with legislative leadership in advocating consensus positions that were incorporated into the required enabling legislation for the unprecedented \$850MM Infill Development Set-Aside. Among these consensus positions incorporated into the SB86 enabling legislation were: a) that eligible sites include those revitalizing existing neighborhoods and that projects meet minimum density requirements of 30-, 20-, and 10-units per acre for urban, suburban, and rural jurisdictions, respectively (with a clarification of the 'rural' definition to not disadvantage Central Valley jurisdictions); b) that in addition to cities and counties, that housing developers and redevelopment agencies be considered eligible applicants; c) that under the program, capital improvements clearly defined as 'housing-related infrastructure' be considered separate and distinct from the housing development cost components of a project; d) that a 15% minimum affordability threshold be created in order to promote mixed-income multifamily housing opportunities; and e) that applications be ranked according to infill eligibility, readiness, density, affordability, and proximity to transit, job centers, and community-serving amenities.

We are gratified to see that HCD's 'draft' guidelines go a long way to incorporate both the spirit and the specifics of these consensus positions. We are also encouraged to see the Department emphasizing that three-quarters of the funding be awarded to 'Qualified Infill Projects' as opposed to 'Qualified Infill Areas' in order to best demonstrate to California voters in a timely manner a catalytic step-up in multi-family housing production over the next 3-4 years. Finally, we commend the Department's preliminary per-unit grant limit schedule as realistically reflecting the housing-related infrastructure cost hurdles that have typically precluded more infill development to date.

At the same time, however, CHC suggests further improvements in that: 1) proposed guidelines need to be explicit about minimum project size while also providing ranking criteria appropriate

to large, multi-phased projects (e.g., over 200 units); 2) affordability criteria should not inordinately advantage 100% affordable projects, nor rental over homeownership projects; 3) all eligible applicants should be required to demonstrate recent and relevant housing development experience and a specific housing proposal as part of the application; 4) eligible costs should not include subsidizing residential parking over and above the minimum required by local ordinance nor for mixed-use non-residential components; and 5) housing development costs beyond specifically-defined infrastructure costs should not be subject to program requirements.

Here is a summary of our comments and recommendations across the six distinct categories described above:

1. Project Size/Configuration:

The SB86 enabling legislation makes clear that the focus of this mixed-income housing program is to markedly enhance the production of multi-family rental and homeownership housing. Consistent with the desire to bring new units on line in an expeditious fashion, CHC is strongly supportive of the premise that three-quarters of the program funding should be directed to project-specific applications. Under the TOD guidelines (where higher density thresholds and award amounts apply) there is a scoring preference for transformative projects 100+ and 200+ in size. CHC maintains that under the Infill Set-Aside guidelines, both large and small qualified projects should merit awards within the project-specific set-aside.

In order to bring new housing to fruition and also to be responsive to the wide range of suitable infill sites and the varying capacities of housing developers and local public agencies around the state, CHC would advocate that a minimum project size of 50 units is reasonable. In addition, because there was no specificity or preference in the enabling legislation as to the type of housing produced – i.e., large family, senior, SRO, etc. – it seems more appropriate to allot ranking points according to enhanced unit counts as opposed to enhanced bedroom counts.

At the same time, while the various ranking criteria proposed for Qualified Infill Projects lay out a series of reasonable benchmarks for small-to-moderate size projects, these criteria are in several instances impractical for large, complex projects (e.g., 200 units+) that typically require more time but also have more potential to be transformative in their impact.

CHC recommends that in addition to establishing an explicit project minimum of 50 units, that large (and in some cases, multi-phased) projects be ranked according to the criteria currently contemplated for Qualified Infill Areas – but that these large projects compete in the Qualified Infill Project application set-aside.

Proposed Change: add a new definition between Section 302(i) and (j) to read, “Large Projects means those housing developments featuring 200 or more units in a single or in multiple phases”;

Between subsections (2) and (3) of Section 303 – Eligible Projects, add a new subsection to read, “Housing projects of at least 50 units are eligible to apply for this funding and shall be ranked according to Section 308 – Application Selection Criteria for Qualifying Infill Projects” [see proposed revisions to Section 308 below]; for Large Projects of 200 or more units shall be ranked according to Section 309 – Application Selection Criteria for Qualifying Infill Areas and Large Projects; tie-breaker criteria shall

include comparison of unit count, subsidy per unit requested, and transformative impact measures such as the necessity of brownfield/toxic clean-up and re-constituting a non-residential site to residential use.” [see proposed revisions to Section 309 below];

Revise the title of Section 309 to read, “Application Selection Criteria for Qualifying Infill Areas and Large Projects”;

*Revise Section 309(a)(4) Readiness Criteria for Qualifying Infill Projects [and Large Projects] to read, “6 points will be awarded for submission of a letter of support from the legislative body, the local planning, or the local housing and community development agency of the Locality having the jurisdiction over the Qualified Infill Area.”
(change noted in underlined text)*

2. Affordability Criteria:

The enabling legislation stressed the importance of providing sustainable housing communities available across a broad income spectrum. Current guidelines provide an inordinate advantage to 100% affordable projects and run the considerable risk that this unprecedented program will simply become another gap financing tool. Beyond the special factoring proposed for 100% affordable TCAC and MHP projects under Section 308(b), the proposed infill guidelines contemplate an additional affordability incentive by offering more ranking points under the affordability criterion, the proposed per-unit grant limits include a sizeable advantage for affordability.

Because under the Section 302 (a) definitions, consistent with the enabling legislation, a minimum 15% of units must be affordable to households at 60%/120% AMI for rental/homeownership housing, then affordability points should be available for both increasing the number of affordable units as well as the depth of affordability. Accordingly, while the ‘draft’ guidelines would allow a mixed-income rental project to achieve the 30 point affordability ranking criterion maximum by doubling the minimum required number of affordable units to households at/below 30% AMI, it should be possible for a mixed-income project to score a proportional number of points based upon the number of units above the 15% minimum threshold at less than/equal to 50% AMI.

In addition, Affordability Scoring under the ‘draft’ guidelines clearly creates a preference for rental housing. There is nothing in the enabling legislation nor in the original PROP 1C bond language that supports such a preference for rental over homeownership infill developments. The new program should be responsive to the pool of qualified applications received in a given round, not a pre-determined apportionment between rental and homeownership housing.

Proposed Change: delete Sec. 308(b)(1) – Affordability Criteria for Qualified Infill Projects and revise existing subsection (3) to read, “0.6 points will be awarded for each percent of total units that are rental units restricted to occupancy by households with incomes less than or equal to 50% AMI for rental projects or 100% AMI for homeownership projects”; similarly, delete Sec. 308(b)(2) and revised existing subsection (4) to read, “1.0 points will be awarded for each percent of total units that are rental units restricted to occupancy by households with incomes less than or equal to 30% AMI for rental projects or 80% AMI for homeownership projects”;

Similarly, delete Sec. 309(b)(1) – Affordability Criteria for Qualified Infill Areas [which shall serve as ranking criteria for both Qualified Infill Areas and Large Projects] and revise existing subsection (3) to read, “1 point will be awarded for each percent of total units that are rental units restricted to occupancy by households with incomes less than or equal to 50% AMI for rental projects or 100% AMI for homeownership projects”; similarly, delete Sec. 308(b)(2) and revised existing subsection (4) to read, “2 points will be awarded for each percent of total units that are rental units restricted to occupancy by households with incomes less than or equal to 30% AMI for rental projects or 80% AMI for homeownership projects”.

3. Eligible Applicants:

After all of the effort on the part of a diverse array of interested parties in crafting the enabling legislation for this unprecedented Infill Development Set-Aside, it was alarming to see Business Improvement Districts added discreetly to the list of eligible applicants. Notwithstanding the benefits to localities many of these organizations may provide, PROP 1C funding was intended specifically for housing development – and not for general infrastructure investment that may or may not someday result in real housing being built. In addition to demonstrating why it may be infeasible for a particular BID to finance necessary infrastructure through traditional bonding/redevelopment means, a BID applicant must be held accountable on the housing issue. The ‘draft’ regulations begin to address this by requiring a public agency be a co-applicant; but in addition, a bona fide housing developer and real housing project should be part of the application to be eligible for consideration.

Proposed Change: change Section 305 – Grant Terms and Limits (d) to read, “Business Improvement district applicants must include an experience housing developer as co-applicant and identify the specific qualifying mixed-income multi-family housing project(s) proposed in the application; the BID must also demonstrate that it is not feasible to fully finance the Project through assessment of the business improvement area as provided in Chapter 3, Part 6, Division 18 (commencing with section 36530) of the Streets and Highways Code; the BID shall commit to matching an award of infill set-aside funds with an assessment of its own members at a ratio not less than 1:1.”; (change noted in underlined text)

4. Eligible Costs:

As was amply demonstrated at various state hearings last year, the dire need for infrastructure investment includes many no doubt worthy transit agencies; in addition, developers made it clear that one necessary trade-off of building on infill sites involving increased density is that infrastructure investment must include parking. Nevertheless, with the intent of the Infill Set-Aside being the development of new mixed-income housing and not parking, in order to effectively and efficiently direct funding for housing, the use of the funding for parking-related costs should be further refined.

In addition, with parking allowable under certain defined conditions as housing-related infrastructure, it is important to clarify ineligible costs as defined in the ‘draft’ guidelines.

Proposed Change: revise Section 304 – Eligible Costs subsection (a)(4) to read, “Replacement of transit station parking spaces, plus the minimum residential per unit parking space as required by local land use entitlement approval but not more than 1 parking space per unit”; in addition, add to Section 304 – Eligible Costs, subsection (e)

that among ineligible infrastructure costs should be, “parking associated with the mixed-use non-residential component of a housing development”;

Revise Section 304 – Ineligible Costs subsection (e)(3) to read, “Structural elements related to the housing component with the exception of those elements directly attributable to allowable parking-related costs as defined above.”

5. Prevailing Wages:

Based upon considerable input from CHC’s developer members from across the state, it is imperative that this unprecedented Infill Set-Aside funding be employed efficiently. To that end, for those developers interested in utilizing this funding – perhaps in conjunction with low income housing tax credits and/or tax exempt bonds – there should not be a prevailing wage ‘penalty’ in the absence of other state funding. Many developers, particularly in the Central Valley and Southern California have not utilized the MHP program administered by the Department because of the construction cost burden that results from mischaracterizing private housing development as a ‘public works’ project.

Currently, the ‘draft’ guidelines state under Section 314 Prevailing Wages that “the funding of a Capital Improvement Project under the Program shall not, in and of itself, be considered public funding of a Qualified Infill Project or a Qualified Infill Area.” However, with parking-related costs considered an eligible expense under certain circumstances defined in Section 304(a)(4) [revised as we’ve proposed], further clarification is in order. Because elements of a podium, including structural columns, beams, and concrete slabs, can be construed to be part of the housing component of a project, arguably prevailing wages could be attributable to the entire housing component even in the absence of other state funding for the housing component.

Proposed Change: revise Section 314 – Prevailing Wages by adding an additional paragraph to read, “All applicable requirements of the Program pertaining to an award under the infill set-aside shall apply to only the discrete housing-related infrastructure component that is subsidized. Eligible costs attributable to parking spaces specifically allowed under Section 304(a)(4) shall be limited to the pro rata costs of those structural elements necessary for the parking space but not for the housing component itself. ”

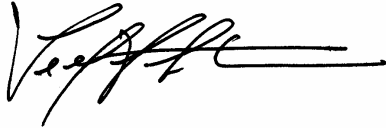
Finally, we want to express our appreciation to you both and to the Department for expediting the implementation of guidelines to ensure that this precious infill set-aside funding is put to use in the current fiscal year. We fully appreciate the Department’s intent to issue a \$240MM Notice of Funding Availability by the end of this month. At the same time, however, we are seriously concerned that without incorporating the recommendations described above, the Department will run the considerable risk of establishing precedent and ongoing expectations that could well be detrimental in the long run to making the most of this unprecedented funding.

As a ‘big tent’ organization, CHC is dedicated to establishing a ‘permanent source’ (or an array of pay-as-we-go sources) in order to obviate the future reliance on general obligation bonds to provide funding catalytic to spurring more housing choice and affordability in California. The \$850MM Infill Development Set-Aside represents the single most important opportunity to date by which to demonstrate to the voters of California across the income spectrum that indeed funding at the state level can play a significant role in spurring the development of more rental and homeownership multi-family housing.

Accordingly, CHC is keenly interested in seeing that the initial NOFA is broadly appealing to members of the housing sector across the private, non-profit, and public sectors – for those doing large developments to those doing moderate-size developments, for those doing 100% affordable developments to those doing mixed-income development. We hope you will engage us in constructive consideration of revisions to the current 'draft' guidelines in order to ensure the maximum effectiveness of this new program.

Thank you,

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey J. Loustau", followed by a horizontal line extending to the right.

Jeffrey J. Loustau
Executive Director

Cc: Senate President pro tem Don Perata
Assembly Speaker Fabian Nunez
Senate Transportation and Housing Chair Alan Lowenthal
Dale Bonner, Secretary – Business, Transportation, and Housing Agency
CHC Board of Directors, CHC Policy Leadership Task Force

**Infill Infrastructure Grant Program
Guideline Comments**

Organization: California Housing Consortium
Preparer Name: Jeff Loustau/Eric Mackres
Date: January 10, 2008

ARTICLE 1: General

	Subdivision (a, b, c, etc.)	Paragraph (1, 2, 3, etc.)	Comment
Section 300: Purpose and Scope			
Section 301: Program Description			
Section 302: Definitions	Add Definition		<i>“Large Infill Project” means a Qualifying Infill Project that is 200 or more units in a single or in multiple phases</i>

ARTICLE 2: Program Requirements

	Subdivision (a, b, c, etc.)	Paragraph (1, 2, 3, etc.)	Comment
Section 303: Eligible Projects			
	(a)	Add new paragraph between (2) and (3)	<i>“Include not less than 50 units (smaller Qualifying Infill Projects shall be ranked according to Section 308, Large Infill Projects shall be ranked according to Section 309); tie-breaker criteria shall include comparison of unit count, subsidy per unit requested, and transformative impact measures such as the necessity of brownfield/toxic clean-up and re-use designation to residential.”</i> [see proposed revisions to Section 309 below]
Section 304: Eligible Costs			
	(a)	(4)	Change to <i>“Replacement of transit station parking spaces, plus the minimum residential per unit parking space as required and documented by local land use entitlement approval, not to exceed one parking space per residential unit in parking structures.”</i>
	(e)	(3)	Change to read <i>“Structural elements related to the housing component with the exception of those elements directly attributable to allowable parking-related costs as defined in Paragraph (a) (4) above.”</i>
	(e)	Add (6)	<i>“Parking associated with the mixed-use non-residential component of a housing development”</i>
Section 305: Grant Terms and Limits	(d)		Change to read: <i>“BID applicants must include an experienced housing developer as co-applicant, identify the specific qualifying mixed-income multi-family housing project(s) proposed in the application and commit to matching an award of Infill Program funds with an assessment of its own members at a ratio of not less than 1:1; the BID must also demonstrate that it is not feasible to fully finance the Project through assessment of the business improvement area as provided in Chapter 3, Part 6, Division 18 (commencing with section 36530) of the Streets and Highways Code.”</i>

ARTICLE 3: Application Procedures

	Subdivision (a, b, c, etc.)	Paragraph (1, 2, 3, etc.)	Comment
Section 306: Application Process			
Section 307: Application Threshold Requirements			

ARTICLE 4: Program Operations

	Subdivision (a, b, c, etc.)	Paragraph (1, 2, 3, etc.)	Comment
Section 310: Legal Documents			
Section 311: Reporting Requirements			
Section 312: Performance Requirement			
Section 313: Defaults and Cancellations			
Section 314: Prevailing Wages			Add an additional paragraph: " <i>All applicable requirements of the Program pertaining to an award under the infill set-aside shall apply to only the discrete housing-related infrastructure component that is subsidized. Eligible costs attributable to parking spaces specifically allowed under Section 304(a)(4) shall be limited to the pro rata costs of those structural elements necessary for the parking space but not for the housing component itself.</i> "

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