

CONTRA COSTA COUNTY

Department of Conservation & Development



Affordable Housing Program

Program Guidelines – HOME, CDBG-Housing & HOPWA

October 2018

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PART 1 AVAILABLE FUNDS AND ELIGIBLE ACTIVITIES

A. Community Development Block Grant - Housing

The primary purpose of the CDBG program is to develop viable urban communities by providing decent housing, a suitable living environment and expanded economic opportunities principally for persons of low income. The County's goal is to develop and conserve viable communities in areas where blight and disinvestment threaten residents' safety, vitality and productivity. County CDBG funds can be used only for projects that benefit Urban County¹ residents. CDBG funds can be used for acquisition, rehabilitation and downpayment assistance loans. CDBG cannot be used for new construction of housing.

B. HOME Investment Partnerships Act

The purpose of the HOME program is to expand the supply of decent, safe, sanitary, and affordable housing for very-low and low-income households. Contra Costa County as the Urban County representative, and the Cities of Antioch, Concord, Pittsburg, and Walnut Creek, are a Consortium for purposes of participation in the HOME program. HOME funds may be used for projects to acquire, rehabilitate, and construct housing for lower-income households in the Consortium area. HOME funds cannot be used for half-way houses or student housing.

C. Housing Opportunities for Persons with AIDS

The purpose of the HOPWA Program is to provide affordable housing, housing counseling and advocacy programs for low-income persons with HIV/AIDS who either are homeless or have unstable housing. The County represents all Contra Costa jurisdictions for purposes of administering the HOPWA program.²

¹ The Urban County consists of all of Contra Costa with the exception of the cities of Antioch, Concord, Pittsburg, and Walnut Creek. These cities are separate entitlement jurisdictions under the CDBG program.

² Pursuant to the National Affordable Housing Act, HOPWA funds are allocated on an annual basis to the City of Oakland for the Oakland PMSA, which includes Alameda and Contra Costa County. Contra Costa receives a formula share of HOPWA funds through the City of Oakland.

PART 2 NOFA, APPLICATION SUBMISSION, REVIEW AND FUNDING PROCESS

Each year, Contra Costa County Department of Conservation & Development (DCD) issues a Notice of Funding Available (NOFA) to award available federal funding to projects throughout the County. Funds include CDBG Urban County, HOME Consortium, and HOPWA funding. See Appendix A for a typical NOFA schedule.

A. Application Submission

Applicants are required to complete an application and turn it in by the due date and time. Late applications are not considered unless sufficient funding remains after all on time applications are evaluated and awarded funds.

Applications are available online at <http://www.citydataservices.net/>. Instructions for accessing the application will be provided at the annual technical assistance meeting. This meeting is held in the fall.

B. Review and Funding Process

Applications will be reviewed by DCD staff for eligibility, completeness, meeting threshold requirements, and competitiveness. Incomplete applications may not be accepted. Due to limited funds, not all eligible application will be funded.

C. Appeal Process

Any persons, firm, partnership, or corporation aggrieved by a decision pursuant to the actions of the affordable housing program shall be afforded an opportunity for review of that decision by the Director of the Department of Conservation and Development, or designee. Upon review of the case, a final decision will be rendered by the Director, subject to appeal to the Board of Supervisors, under the appeal procedures in Title 1, Chapter 14-4 in the County Ordinance Code.

D. Time Frame for Use of Funds

Applicants for funds must demonstrate that all funding for the project will be secured and that the applicant will be prepared to enter into binding legal agreements within 12 months of the start of the fiscal year for which funds are awarded. In addition, projects must begin construction within 12 months from formal commitment of funds. This means that competitive projects will have secured permanent financing commitments shortly after DCD allocation of funding. It is the Developer's responsibility to keep DCD staff apprised of all schedules and milestones for the project. Failure to do so could mean the loss of funds. Failure to move the project forward in a reasonable time frame could result in loss of funds.

E. Maximum Funding Amounts and Cost Allocation

Cost allocation is required in all HOME rental or homebuyer projects. HOME funds may be used to assist one or more housing units in a multi-unit project, but only the actual HOME eligible development costs may be reimbursed by the HOME program. The maximum HOME investment permissible is the lesser of three amounts: (1) the funding gap or needed amount of HOME funding, (2) the cost of HOME units, or (3) the maximum project subsidy.

For more information, see CPD-16-15 Notice dated August 25, 2016:

<https://www.hud.gov/sites/documents/16-15CPDN.PDF>.

The per unit maximum includes DCD project delivery costs which includes activities such as conducting a National Environmental Policy Act review, loan document preparation, and monitoring for compliance with federal requirements³ during construction. This amount is roughly estimated to be \$50,000 per development. The maximum amount of HOME, CDBG and/or HOPWA funds DCD will invest is also limited to the total amount of funds necessary (when combined with other financing and assistance) to enable the project as proposed to be developed and to operate in compliance with all federal requirements.

The current HOME Maximum Project Subsidy for rental units in Contra Costa County are the following:

- \$137,074/unit for 0-bedroom unit
- \$158,600/unit for 1-bedroom unit
- \$195,018/unit for 2-bedroom unit
- \$255,229/unit for 3-bedroom unit
- \$281,137/unit for 4-bedroom unit

Homeownership activities allow modest down-payment assistance for first-time homebuyers in conjunction with commercial mortgage loans using County underwriting standards. Appraised value of home after rehabilitation may not exceed 95 percent of the area median purchase price of Contra Costa County as defined by HUD or the 203[b] limits. The current limit for existing single-family housing is \$458,000 and is \$536,000 for newly constructed single-family housing.

HOME funds are typically only eligible for new HOME projects. Except in rare circumstances, it is not permissible to invest additional HOME funding during the HOME affordability term into a project that has previously been awarded funds.

F. Specific HOPWA Requirements

A project funded with HOPWA must set aside units for people with HIV/AIDS and must provide a plan to provide services for those households as part of their application. Owners must commit to provide annual reports throughout the compliance period. Prior to loan closing and disbursement of funds, funding or a contractual agreement to provide services for those HOPWA tenants must be demonstrated.

1. Required Rents

HOPWA regulations require that tenants pay rent for all HOPWA assisted housing. The amount of rent must equal (including utilities or a utility allowance) **the higher** of:

- 30% of the household's adjusted gross income, or
- 10% of the household's monthly gross income, or
- if the household is receiving public assistance, the portion of the assistance specifically designated for housing costs.

³ Federal requirements may include some or all of the following: eligible activities, NEPA mitigations, relocation, procurement, Section 3, Davis-Bacon, construction monitoring, marketing, and lease-up.

Tenant fees charged over and above rent are allowable only if the fees pay for food or services not supported with HOPWA funds.

Group homes or other non-emergency shared living situations may have no more than one person or family per sleeping room.

2. Limitations on New Construction

Under HOPWA regulations, new construction is limited to Single Room Occupancy dwellings (SROs) and "community residences." A community residence is defined by HUD as "a multi-unit residence designed to provide a lower cost alternative to institutional care; to prevent or delay the need for such care; to provide a permanent or transitional residential setting with appropriate services to enhance the quality of life for those who are unable to live independently; and to enable such person to participate as fully as possible in the community."

3. Support Services

Federal HOPWA regulations require that all recipients of HOPWA funding ensure that tenants receiving housing assistance are provided with appropriate support services. Selected applicants will be required to work with service providers in the area to ensure that the support services needs of their HOPWA-eligible residents are met. Under the HOPWA rating and ranking criteria, applications will be judged on both the services plan provided, as well as documentation on the relationship between the developer and the social services agency proposed.

4. Confidentiality

Protection of client confidentiality is a major concern for persons living with HIV/AIDS, who may face discrimination, harassment, or victimization should their diagnosis become known. Fear of unauthorized or inadvertent disclosure often prevents individuals living with HIV from accessing HIV-related information and services. HOPWA regulations state that the names of individuals must remain confidential. Other personally identifying information includes any data that, alone or in conjunction with other data, is likely to disclose a client's identity and/or location. HOPWA Confidentiality Best Practices include but are not limited to the following:

- Gathering client data through private intake sessions;
- Storing client data by limiting the number of staff who have access to client data and keeping records safe and secure;
- Ensure that client consent to share data is obtained;
- Avoid unintentional information sharing;
- Provide aggregate client data for HOPWA reporting purposes;
- Create confidential systems for financial reporting; and
- Take precautions to protect confidentiality and limit exposure of identifiable information.

For more information, reference the HOPWA Confidentiality User Guide:

<https://www.hudexchange.info/resources/documents/HOPWA-Confidentiality-User-Guide.pdf>

PART 3 APPLICATION EVALUATION CRITERIA

Applications submitted in response to the annual Notice of Funding Availability are assessed against federal eligibility requirements³, programmatic thresholds and evaluation criteria in order to fairly evaluate and rank these applications. Evaluation criteria is described in Section 3.A below. County staff also strives to use the funds throughout the County and not overly allocate funds in a single area.

Applications will first be reviewed by DCD staff to determine if the federal eligibility and programmatic thresholds are satisfied. Projects meeting requirements will be evaluated according to the evaluation criteria.

DCD staff makes its funding recommendations to the Affordable Housing Finance Committee (AHFC). Its recommendations are forwarded to the Board of Supervisors for approval. The AHFC is a board appointed citizen advisory committee consisting of City, County, and Community representatives.

A. Threshold Requirements

Projects must be targeted to lower income households, and must comply with affordable rent and sales price restrictions. See Appendix B for income and rent limits.

1. In order to be considered for funding, projects must comply with all HUD regulations and restrictions. It is the applicant's responsibility to review program requirements for CDBG, HOME, and HOPWA funding. Qualified projects will then be evaluated in the following categories: project characteristics, developer and development team experience, targeting, feasibility, cost analysis, schedule/timing, local (jurisdictional) support, and consistency with local housing elements, the Consolidated Plan, and Analysis of Impediments to Fair Housing Choice.
2. The developer and development team must have demonstrated experience and capacity for completing projects similar to what is proposed in terms of scope, size, budget, financing structure, ability to obtain financing, and schedule. The developer, or the housing management entity that the developer contracts with, must also have a demonstrated capacity for managing completed projects similar to what is proposed in terms of scope, size, operating budget, and services.
3. Developers must have site control, and evidence of site control must be included in the application.
4. Requested funds must fill a financing gap. The project must have identified all sources of funds and can demonstrate the need for an additional source of funds. CDBG, HOME, or HOPWA funds may not replace other permanent funding on the project. Exceptions to this rule will be made only when a permanent funding source is no longer viable.
5. Project must meet one of the following criteria:
 - a) Long-term affordable rental housing which is either permanent or transitional housing in nature; or
 - b) Homeownership activities that provide long-term affordable ownership housing that qualifies as ownership housing under CDBG or HOME regulations; or
 - c) Special needs housing, including group homes or emergency shelters.

6. Federal Regulations require that all HOME-assisted units must meet the following minimum income limits:

Rental Housing:

- a) 100% of HOME-assisted units must be reserved for households with incomes at or below 80% of area median income (AMI) as defined by HUD; or
- b) 20% of HOME-assisted units must be reserved for households at or below 50% of AMI.
- c) County policy establishes a goal of 10% of units affordable at 30 percent AMI.

County policy is for 100% of assisted units to serve households with incomes at or below 50% AMI.

Ownership Housing:

100% of HOME-assisted units must be reserved for households at or below 80% of median income.

7. HOPWA requirements are in Section F.
8. Applicants must agree to enter into a regulatory agreement with the County that restricts a specified number of units under CDBG, HOME and/or HOPWA program.

B. Allowed Construction and Operating Budget

1. Developer Fee

A developer fee is an eligible cost and must reflect a reasonable rate. DCD standard for developer fee ranges between 4% and 8% of total development costs depending on the complexity of the development, and no more than \$1.5 million in cash to the developer at construction close. The total developer fee may be up to the amount allowed by the Low Income Housing tax credit program. Any amount over \$1.5 million must be deferred, or contributed to the development as sponsor equity. Fees in excess of this standard may be approved at the discretion of DCD, but developers will be required to justify developer fees proposed in excess of this standard in a written request.

2. Partnership Management and Asset Management Fee

The total of the partnership management and asset management fee is limited to \$32,000 per year during the tax credit period and \$25,000 per year after year 15. No automatic escalation is allowed.

3. Operating Budget Requirements

Operating budgets and 20-year pro forma must conform to the following criteria:

- a. The operating budget must show at least break-even cash flow within 18 months of initial rent-up. If this is not achievable, a written explanation in the financial narrative should accompany the application.
- b. Include operating and replacement reserves (See Replacement and Operating Reserve Requirements below).

- c. Five percent annual vacancy/collection loss for family, senior, and preservation projects and 10% annual vacancy/collection loss for SRO or special needs projects.
- d. Three and a half percent annual increase for expenses (other than property taxes and replacement reserves deposits) and 2.5 percent annual increase for rental income.
- e. Do not assume Section 8 project based rental assistance unless the County Housing Authority has previously made an award for the proposed project.

The operating budget will be reviewed to ensure it is sufficient for proper maintenance and management but is not excessive compared to other similar properties. If the applicant is proposing different standards than those outlined above, a written explanation and justification is required.

4. Replacement and Operating Reserve Requirements

DCD financing is generally in place longer than other financing sources (55 years). As a result, the owner's ability to maintain and repair the project over the long term is extremely important to DCD. Exceptions to the stated requirements will be granted in rare cases only. Use of replacement and operating reserves is subject to prior review and approval by DCD, or other senior lender.

a. **Replacement Reserves:** At least 0.6 percent of the replacement cost of the structure annually, up to \$600 per unit per year. For rehabilitation projects, developers will be required to submit a third party replacement cost analysis in which the lifecycle and cost of major building systems is estimated and amortized over the number of units and years. Substantial rehabilitation projects should use reserve standards for new construction projects.

b. **Operating Reserves:** initial operating reserve of 2 percent of the gross rental income must be capitalized on a monthly basis until the reserve reaches an amount equal to six months operating costs (including debt service costs). The operating reserve must be maintained at the level of six months of operating costs for the period during which the property is regulated by the County Regulatory Agreement.

c. **HOME Rental Compliance Monitoring Fee:** As specified in the Federal HOME regulations 24 CFR 92.214 (b)(1)(i) a fee may be charged to cover the cost of ongoing monitoring and physical inspection of HOME projects during the period of affordability. The project proforma is required to include a line item including an anticipated monitoring fee of \$250 per HOME unit every year of the required period of affordability. This fee may be waived if the County is the issuer of tax-exempt bonds for the development. If the applicant is proposing different standards than those outlined above, please provide an explanation and rationale in the narrative portion of the finance section of the application.

C. Market Study Requirements

A market study that details the need for the proposed project is required with the application submission. Details for the market study are outlined in Appendix D.

D. Utility Allowance Requirements

Maximum rents must be adjusted downward by an allowance for tenant-paid utilities based on the anticipated utility costs for the building. The utility allowance requirement at 24 CFR 92.252 (d) in the HOME Rule is applicable to all rental projects to which HOME funds were committed on or after August 23, 2013. The utility allowance calculation for a HOME-assisted rental unit are determined by using one of the following five methodologies: (1) the HUD Utility Schedule Model, (2) Multifamily Housing Utility Analysis, (3) Utility Company Estimate, (4) LIHTC Agency Estimate, or (5) Energy Consumption Model (Engineer Model).

For more information on the HOME Program Utility Allowance Requirements, reference HOMEfires – Volume 13 No. 2, revised August 2016:

<https://www.hudexchange.info/resources/documents/HOMEfires-Vol13-No2-Guidance-on-How-to-Establish-Utility-Allowances-for-HOME-Assisted-Rental-Units.pdf>

Under the HOME Rule, HOME-assisted units are no longer permitted to use the utility allowance established by the local Public Housing Authority (PHA) for projects with HOME funds were committed on or after August 23, 2013. CDBG-assisted and HOPWA-assisted rental units are still permitted to use the utility allowance established by the local PHA.

E. Construction Contingency

The development must include a minimum 10 percent construction cost contingency for new construction projects and a minimum 15 percent construction cost contingency for rehabilitation projects are required in the development budget.

F. Reasonable Development Costs

Projects must not exceed reasonable development costs. The applicant must include rationale for all budget line items. If project budgets are deemed unusually high or low, DCD staff may request additional information. If costs go up during the loan closing phase, DCD reserves the right to evaluate an application and withdraw funding based on new information.

Final Work Write-up

All projects must demonstrate cost reasonableness verified by an independent third party. A final work-write up showing the costs per unit will be required.

G. Additional Requirements

- 1. Rehabilitation Standards** – All proposed rehabilitation properties funded with HOME funds are subject to minimum property standards at project completion. In addition, rehabilitation projects are subject to property standards throughout the HOME affordability period. In addition, for projects with 26 or more units, a capital needs assessment will be required. Both the single-family and multiple-family standards can be found on the County’s Developing Affordable Housing webpage: <http://www.cccounty.us/aff-hsg-dev>
- 2. CHDO HOME funds** – If a developer is applying for CHDO funds, the developer must be a nonprofit agency that has been determined by the Consortium to meet CHDO requirements as specified in the federal HOME regulations 24 CFR 92.2 (7/24/13 revision) or be a limited liability company, or limited partnership that includes a qualified CHDO. Information on this regulation can be found in 24 CFR 92.300(a)(1). CHDO qualification is included in the annual NOFA. See

Appendix F for additional information.

3. **Special Needs Housing:** If proposed housing development targets a special need population, a plan to provide supportive services must be submitted. This may include services provided directly by the applicant organization and/or memorandums of understanding (MOUs) with other organizations. If services are to be provided by other organizations, a MOU or letter of intent to enter into a MOU must be attached.
4. **HOME Homeownership Housing:** As specified in the federal HOME regulations 24 CFR part 92.254(a)(3), homebuyers receiving down payment assistance with HOME funds or homebuyers that will reside in a HOME-assisted unit must receive housing counseling. 24 CFR part 92.254(a)(3) also specifies all HOME-assisted units must be sold to eligible buyers within nine months of the date of completion of construction or rehabilitation (I.E. Certificate of Occupancy). If property is unsold within nine months, it must be converted to a HOME-assisted rental unit or the HOME funds must be repaid.
5. **Administrative Procedures:** Contractor's administrative procedures must be in compliance with 2 CFR Part 200.
6. **Public Recognition of Funding:** Contractor will publicly recognize the funding provided by Contra Costa County in all newspaper articles and any other public relations opportunities related to this project. DCD staff and members of the Board of Supervisors must be invited to participate in groundbreaking and grand opening ceremonies, if held.

PART 4 LOAN TERMS AND REQUIREMENTS BEFORE LOAN CLOSING

A. Loan and Contract Terms – Rental Projects

Standard loan terms are 3 percent simple interest with a 55 year term and with annual payments due from surplus cash or residual receipts. HOPWA loans are zero interest and fully deferred for 55 years.

It is the County's goal to assist developers achieve financially viable and to leverage other financing; therefore, loan terms may be changed based on DCD staff review of a written request with supporting documentation. A debt coverage ratio of up to 1:1.5 is allowed if required by senior lenders. Draft loan documents (loan agreement, regulatory agreement, deed of trust and promissory note) are circulated to the project developer prior to execution. It is the developer's responsibility to negotiate this requirement with other lenders. In addition, the annual audit of the project must calculate the amount of payment owed to each separate lender every year as part of the ongoing multi-year reporting requirements. All loans are due on sale, refinancing, or transfer (except to a related entity, such as a limited partnership, subject to the County approval).

DCD loans are secured by a deed of trust recorded on the property. Income, occupancy and rent restrictions are placed on the property through a recorded regulatory agreement.

B. Loan and Contract Terms – For-Sale Projects

Standard loan terms for the loan to the developer are zero interest deferred for the construction period. The County loan is considered repaid by the developer when, as each home is sold, a mortgage loan is provided to the homebuyer. County loans to the homeowner are for 30 years with deferred payments. Loans are due at the end of the term, or upon sale or transfer. The homeowner must repay the original principal plus a share of the home appreciation to the County.

Draft loan documents (loan agreement, deed of trust and promissory note) are circulated to the project developer prior to execution.

DCD loans are secured by a deed of trust recorded on the property. Income, occupancy, and sale restrictions are included in the loan agreement with the developer and a loan agreements or resale restriction with the homebuyer.

C. Insurance Requirements

Proof of insurance is required prior to execution of loan documents. If the project will be owned by an LP or LLC, the LP or LLC must be able to provide proof of the required insurance. Due to the nature of how LPs and LLCs hold insurance, the County's Risk Management Department usually allows the worker's compensation and automobile insurance to be held in the name of the nonprofit general partner.

During development, developers must have comprehensive general liability, and automobile insurance coverage of at least \$2 million per occurrence. Workers' Compensation must be at least \$1 million per incident. DCD also requires property (hazard) damage insurance for rehabilitation projects in an amount equal to 100% of the replacement cost of the structure. For all new construction projects, developers will be required to obtain course of construction/builder's risk insurance in an amount equal to the value of completed project or materials. All General Liability and Auto insurance policies must name the County as an additional insured. Requirements may change based on the County's Risk Management standards.

After completion of construction, similar levels of liability and hazard coverage are required and are specified by the Regulatory Agreement.

D. County Legal Fees & Environmental Review Costs Covered by Project

County costs to conduct environmental review and draft legal documents will be covered by additional CDBG, HOME, or HOPWA funds allocated to the project. These funds will not be added to the loan, but will be considered project costs when calculating the maximum subsidy amount.

E. Disbursement of Funds

Funds are generally disbursed on a reimbursement basis upon submission of invoices and specified backup documentation. Funds for acquisition of properties may be provided through deposit of funds into an escrow account with written instructions from the developer to the County.

F. Loan Retention

DCD requires at least \$20,000 of the DCD funds be retained by DCD as performance retention. The retention will be released upon recordation of a Notice of Completion, release of all liens, satisfactory compliance with all reporting requirements and submission of a cost certification. Reporting requirements will be outlined in more detail in the loan agreement and include occupancy details, cost

report, resolution of Davis-Bacon issues, final relocation reports, and proof of compliance with NEPA mitigations.

G. Subordination Requirements

Any agreement by the County to subordinate the Deed of Trust and/or Regulatory Agreement to an encumbrance securing and/or evidencing the Bank Loan will be subject to the satisfaction of each of the following conditions:

1. All of the proceeds of the loan, less any transaction costs, are used to provide acquisition, construction and/or permanent financing for the development.
2. The lender is a state or federally chartered financial institution, a nonprofit corporation or a public entity that is not affiliated with the borrower or any of the borrower's affiliates, other than as a depositor or a lender.
3. Borrower demonstrates to the County's satisfaction that subordination of the Deed of Trust and the Regulatory Agreement is necessary to secure adequate acquisition, construction, and/or permanent financing to ensure the viability of the development, including the operation of the development as affordable housing, as required by the County loan documents. To satisfy this requirement, borrower must provide to the County, in addition to any other information reasonably required by the County, evidence demonstrating that the proposed amount of the loan is necessary to provide adequate acquisition, construction, and/or permanent financing to ensure the viability of the development, and adequate financing for the development would not be available without the proposed subordination.
4. The subordination agreement(s) is structured to minimize the risk that the Deed of Trust and the Regulatory Agreement will be extinguished as a result of a foreclosure by the lender. To satisfy this requirement, the subordination agreement must provide the County with adequate rights to cure any defaults by borrower, including: (1) providing the County or its successor with copies of any notices of default at the same time and in the same manner as provided to borrower; and (2) providing the County with a cure period of at least sixty (60) days to cure any default.
5. The subordination(s) of the County loan is effective only during the original term of the bank loan and any extension of its term that is approved in writing by the County.
6. The subordination does not limit the effect of the Deed of Trust and the Regulatory Agreement before a foreclosure, nor require the consent of the lender prior to the County exercising any remedies available to the County under the County loan documents.

H. Mandatory Awardees Meeting

If funded, developers must meet with DCD staff to discuss the following requirements: loan closing, Section 3, Davis Bacon, invoice submission process, closeout procedures, and ongoing reporting requirements. These meetings are at the discretion of DCD staff.

PART 5 ADDITIONAL REQUIREMENTS

The project must comply with federal crosscutting requirements. These requirements will be described in further detail to the project sponsor upon commitment of funding and a brief summary is included below:

A. Environmental Review

Prior to final project approval and execution of loan documents and initial disbursement of funds, the required environmental review under the National Environmental Policy Act (NEPA) must be completed. The NEPA process may take three to six months to complete. DCD staff may not start work on an EA until the local CEQA review is complete. Please note that upon submittal of an application, pursuant to HUD environmental review regulations, no activities can take place on the project (even if the activities are funded by non-federal funding sources) unless an environmental review for the entire project has been completed. Because of the likelihood that federal funds will be awarded, applicants must refrain from undertaking activities that would have an adverse environmental impact or would otherwise limit the choice of reasonable alternatives between the time of application submittal and when DCD has completed the environmental review process. **Such activities (known as “choice limiting”) include executing Disposition and Development Agreements (DDAs), acquisition, rehabilitation, conversion, leasing, repairing or constructing property, and any site preparation during the NEPA review period.** Predevelopment activities such as site plans, feasibility studies (i.e. market studies) and applications for other funds may proceed. The prohibition against choice-limiting actions begins on the date the application is submitted to the County. Failure to comply with this requirement could result in the project being ineligible for federal funding.

California Environmental Quality Act (CEQA)

If the project has CEQA clearance from the local planning department, please provide CEQA documents to the County. If CEQA is not complete, the County may request that the NEPA review be coordinated with the CEQA review from the local planning department. Please inform the local planning department to include the county as a responsible entity.

B. Relocation

DCD makes all efforts to minimize displacement of current occupants of proposed housing development projects, and asks that applicants for funds minimize displacement. Federal, and possibly State, relocation laws will apply to projects funded by DCD. These laws are applicable to projects that will temporarily or permanently displace current business or residential occupants. Required relocation assistance and benefits can add substantially to the project cost. Relocation plans are required and must be submitted to DCD for any project that proposes displacement. All developers must contract with a relocation consultant unless the developer can demonstrate existing staff have relocation expertise.

C. Davis-Bacon (Prevailing Wage)

Davis Bacon requirements are triggered when there are more than 11 HOME assisted units. CDBG triggers Davis Bacon in housing projects of eight or more units. HOPWA funding does not trigger Davis Bacon. The bid package must include the current federal wage determination. The contractor must update the bid package if a revised wage determination is published 10 or more days before the bids are due.

D. Other Labor/Contracting Requirements

1. State Prevailing Wage Requirements:

It is the developers' responsibility to determine if state prevailing wage requirements apply to the proposed project and to budget accordingly.

2. Competitive Bidding:

Unless special circumstances apply, HUD and DCD require competitive bidding of all construction and professional services contracts arising from the use of funds under this NOFA. Bid documents must be submitted to the County housing staff for review and approval prior to advertising the bid opportunity. DCD will confirm that the bid package includes all required information pursuant to Davis-Bacon, procurement, and insurance requirements. A list of sites and publications where the bid notice will appear must be included with the bid package submission.

3. Section 3:

Federally-funded projects are subject to HUD Section 3 requirements. Section 3 requires that recipients of HUD dollars spent on housing rehabilitation or construction, and their subcontractors, must provide to the greatest extent feasible employment, training and contracting opportunities to low and very-low income people and businesses. If a project is awarded funding, Section 3 requirements and reporting requirements are triggered. Contra Costa's Section 3 Plan is attached as Appendix G. The text in Exhibit C of the plan must be included in all contracts and subcontracts over \$100,000.

E. Section 504 Accessibility Requirements:

Developments assisted with federal funds must meet the requirements of the Americans with Disabilities Act and the Fair Housing Act, among other local, state, and federal laws. Projects with any federal funds must also meet accessibility requirements of Section 504 of the Rehabilitation Act of 1973 (24 CFR 100.205 and Part 8). Section 504 sets minimum percentages of accessible units, and calls for fully accessible common areas, among its numerous requirements.

1. For all federally-funded projects, a minimum of 5% of the total number of units must be accessible to people with physical disabilities, and an additional 2% of units must be accessible to people with auditory and visual disabilities, as defined in the Uniform Federal Accessibility Standards (UFAS).
2. When Section 504, the Fair Housing Act, and/or ADA apply, the developer and project architect must make a written certification of compliance.

Section 504 does not apply to rehabilitation projects if it is not feasible to modify the site to fully accommodate persons with disabilities.

F. Fair Housing Management and Marketing Plan

A Preliminary Management Plan and Affirmative Marketing Plan are required at the time of application. For rental projects, a final Management and Marketing Plan will be required 180 days prior to construction completion and an executed management contract must be submitted to DCD 90 days prior to construction completion. The County will have the right to approve the management plan, management agent and management contract per our Regulatory Agreement. The final Marketing Plan must be approved prior to beginning of rent-up activities, including marketing flyers and application materials.

G. Language Access Plan

A Language Access Plan (LAP) must be developed to describe how non-English speaking tenants and prospective tenants will be served.

H. Lead Based Paint

Testing and abatement of lead-based paint in rehabilitation projects is required. Projects must follow the federal guidelines, which require notification to prospective residents of potential lead-based paint hazards among other requirements. (See Appendix H)

I. Nondiscrimination

Recipients of funding must not discriminate on the basis of race, color, ancestry, national origin, religion, sex, sexual preference, age, marital status, family status, source of income, physical or mental disability, HIV/AIDS, or any other arbitrary basis in the course of carrying out contracted activities, as well as in the ongoing operations and management of the project for the full term of the regulatory agreement.

J. Income Certification

Per Federal and County requirements, Owners are required to re-examine tenant incomes annually to ensure that tenants continue to meet the income requirements. Rents and tenant incomes will be annually reviewed for compliance by DCD. Incomes must be calculated consistent with the Part 5 definition and guidance found at:

http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/affordablehousing/trainin g/web/calculator/definitions/part5

PART 6 COUNTY POLICIES

In addition to federal requirements, the County has established the following standards:

A. Developer Standards

An applicant must demonstrate experience and capacity to complete the project. Experience includes the successful development and completion of three projects of a similar size and scope by the developer. The developer must have its own paid staff who are assigned to the project, who have worked on similar projects, and whose résumés demonstrate their ability to guide the project through all stages of the development process. See Appendix C for additional information.

B. Green and Sustainable Building

Green and sustainable building is encouraged. It strives to improve design and construction practices so that new buildings will last longer, cost less to operate, and contribute to increased productivity and better working environments for workers and/or residents. In addition, green building works to protect natural resources and improve the built environment so ecosystems, people, enterprises and communities can thrive and prosper. Green and sustainable building requires thorough planning, thoughtful design and quality construction.

C. Evidence of Community Outreach

The developer must show that the project has the support of the jurisdiction where the project is located. For new construction or substantial rehabilitation projects, the developer must submit evidence of community outreach to residents surrounding the proposed development and to relevant community groups. For acquisition and rehabilitation projects, the developer must demonstrate that

meetings with the existing tenants have occurred, and the tenants are aware of the extent of rehabilitation and work which will occur on site. Applicants must provide a narrative regarding whether or not discretionary approvals are required for planning or building permits, project status and development schedule. Projects that do not require discretionary planning approvals may provide a letter of support from the jurisdiction's Planning or Housing Department.

D. County Legal Costs

The loan closing costs associated with DCD funds shall be borne by the project. Contra Costa County uses both outside and County Counsel, and increases the project allocation by an amount sufficient to cover county legal costs. As these documents are tailored to each project, the costs may range between \$10,000 and \$20,000 depending on the amount of negotiation and re-drafting required. This amount is included in the costs outlined in Part 2, Section E.

E. Multifamily Housing Revenue Bonds

Projects that receive an allocation of funding from DCD, and are applying for Multifamily Housing Revenue Bonds from the California Debt Limit Allocation Committee for either construction or permanent funding, must contact DCD bond administration staff to discuss the County's role as bond issuer.

APPENDICES

Appendix A	Typical NOFA Schedule
Appendix B	Rent and Income Limits
Appendix C	Developer Standards
Appendix D	Market Study Requirements
Appendix E	Conditions Precedent to Disbursement of Loan Funds
Appendix F	CHDO Qualification Requirements
Appendix G	Section 3 Plan

Appendix A – Typical NOFA Schedule

NOFA / Meeting notice sent out	October - November
Applications due to DCD	December
Preliminary Review	January
Applicant Interviews	January-February
Affordable Housing Finance Committee	March-April
Board of Supervisors	April-May

HOPWA applications may be submitted at any time as long as funds are available.

Mandatory meeting for all Contractors	To be scheduled based on project schedule
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Appendix B – Rent and Income Limits

DCD PROGRAMS (CDBG, HOME, and HOPWA)
Effective June 1, 2018

Size/Type of Unit	Rent-Low	Rent-High
Studio (0 Bedroom)	1,017	1,369
1 Bedroom	1,090	1,468
2 Bedroom	1,307	1,763
3 Bedroom	1,510	2,028
4 Bedroom	1,685	2,243
5 Bedroom	1,859	2,456
6 Bedroom	2,033	2,670

Persons in Household	Annual Income Extremely Low (30%)	Annual Very Low Income (50%)	Annual Low Income (80%)
1	24,400	40,700	62,750
2	27,900	46,500	71,700
3	31,400	52,300	80,650
4	34,850	58,100	89,600
5	37,650	62,750	96,800
6	40,450	67,400	103,950
7	43,250	72,050	111,150
8	46,050	76,700	118,300

Appendix C – Developer Standards

Developers who meet the criteria defined below are qualified to apply for funding directly, with no requirements for additional joint venture partners or assistance.

Applicants who do not meet the developer standards must have additional assistance (e.g. a qualified development partner approved by DCD or by hiring qualified staff) to manage the project. Without an approved form of agreement between the applicant and an approved development partner, County contracts will not be entered into and funds will not be released.

An applicant must demonstrate experience and capacity to complete the project. Experience includes the successful development and completion of three projects of a similar size and scope by the Developer. The developer must have its own paid staff who are assigned to the project, who have worked on similar projects, and whose résumés demonstrate their ability to guide the project through all stages of the development process.

The following information is required as part of the application:

- list of current staff assigned to the project including their resumes and job descriptions;
- list of current board members, with affiliation; and
- audited financial statements for the past two years.

DEVELOPMENT TEAM

In addition to the qualifications of the developer and its staff, all members of the development team must demonstrate the experience and capacity to complete the project. Those criteria are listed below.

Architect

The architect or architectural firm must have experience developing three projects that are similar to the proposed project. This experience must be demonstrated by providing:

- names and addresses of projects of comparable size and with similar financing structures and types of construction;
- resumes of staff involved in the proposed project including the lead staff person for this project and his/her experience with similar projects;
- references, including at least three from owners of the similar projects described above.

Attorney

Attorneys must have experience working on at least three projects that are similar to the proposed project. Key staff at each law firm should have experience with housing development. If the developer is using different law firms for different aspects of the development, please provide the following information for each firm:

- experience with real estate law;
- experience with nonprofit corporate law;
- experience with low income housing tax credit syndication, if applicable;
- resumes of firm and key staff members;
- three or more references.

Contractor

If selected at or before the time of application for funding, the general contractor must have experience with at least three projects that are similar to the proposed project. The contractor must provide the following information:

- experience with similar construction type;
- experience with Davis-Bacon and prevailing wage projects, (if applicable);
- financial capacity and bonding capacity equal to 100% of the construction amount;
- resumes of firm and key staff, including the site supervisor;
- three or more references;
- documentation of liability and worker's compensation insurance.

The Contractor must have all applicable licenses in good standing, and must not be on the federal or state Debarred and Suspended Contractors List.

Property Manager

The selection of a property manager is not required at the time of application submission. The following information is required prior to execution of legal documents and is the same for independent or affiliated management companies:

- experience managing at least five projects of similar size, income mix, unit mix, population mix, and service enrichment, if applicable;
- experience in complying with federal income and rent requirements;
- a list of all properties currently managed by the property management company, demonstrate that they can, and are willing to, take on an additional property;
- resumes of key management staff;
- a minimum of three references;
- a standard lease agreement, note any anticipated changes to the document;
- a management plan, either the actual plan for this property, or a sample of a similar plan;
- a copy of anticipated House Rules, if available.

Appendix D – Market Study Requirements

Overview

A market analysis must be submitted at the time a developer applies for housing development funds. The purpose of the market study is to ensure that there is sufficient demand for the housing and the federal housing funds requested. The market study should have definite conclusions, and those conclusions must be based on evidence in the market study.

Under the HOME Program, an assessment of neighborhood and market conditions is required prior to entering into a legally binding agreement for a rental or homebuyer project, including acquisition, rehabilitation, new construction and down payment assistance.

The market assessments must include date completed, and the person and organization conducting the market assessment, including their qualifications. The market assessment can be conducted by the developer, partner, consultant, or other funder such as the State. This option can be part of project delivery costs or pre-development costs if the project is a CHDO project.

To complete the market study, applicants may use HUD's Consolidated Planning Suite (<http://egis.hud.gov/cpdmaps/>), an online data and mapping tool. This system can assist with the completion of a housing assessment, including place-based planning; data on housing and economic conditions; housing stock, facilities and other assets by census tract, county or state; can review location of other affordable housing; demographic data; and grantee funding information. Other data sources that can be used for conducting the market assessment include HUD Consolidated Plan data sets, American Community Survey, private data sources, and web resources.

Below are the following components that must be included in the market study.

- **Market Context**
 - Description of the project area/neighborhood (include maps street level);
 - Description of the City or community in which the project is located (include maps of the neighborhood within city);
 - Description of the project in the context of County-wide information;
 - Maps of development site, community area, primary market area, market area with comparable properties

- **Housing Supply**
 - Description of the current supply of housing units and their type for the neighborhood and the city, compare to the county.
 - *For-sale housing* – Description of the sales volume, price and length of time on market; excess for-sale units on the market; sales prices rising, stable or declining (chart).
 - *Rental housing* – Discussion of market in terms of multi-family housing supply and demand; additional housing needed; the market overbuilt; competing properties (provide a list of competing properties and their rents) both market rate and other affordable units.

- **Vacancy Rates** – analysis of vacancy, stable or declining (chart) for the specific type of housing proposed (rental vs. ownership);

- **Demographic Trends** – Explanation of the demographics of the neighborhood, the population, ethnic and income level of the community immediately surrounding the project and compare against the city or jurisdiction as a whole, including household trends occurring and the market growth, contraction or stability.
- **Housing Demand**-including demand for both affordable and market rate units. If proposed project serves special needs population (HOPWA), the demand for the population and how the project will meet the demand must be addressed.
- **Absorption rates**- What is the current market saturation level for the specific type of project being proposed with the funding requested? What will the impact be on the market and neighborhood to develop this housing project? For homebuyer units, will you be able to sell the planned units within six-months? What is the current rate a similar property remains on the market? Document whether the project will be able to lease-up the planned rental units. Does it fit within the timeframe specified in the project pro-forma?
- **Conclusion**- Describe the need for this particular type of housing units. Document gaps, potential growth area.

Example of Market Absorption/Penetration for Rental Project

Very-Low Income Tax Credit Units
Overall Market Penetration Rate for 77 Rental Units

Market Area

Total Number of households (2010)	21,494
Number of rental households	16,034
Percentage of total (estimated)	75.0%

Number of households with income of \$32,750 - \$54,250	9,112
Estimated number of rental households in income group (75%)	6,843
Market penetration by 77 units	1%

Example of Market Penetration for Sale Programs

Home-Ownership Units
Overall Market Absorption/Penetration Rate for 50 Units

Market Area

Total Number of households (2010)	21,494
Income needed to purchase in this community	
Number of households with income of \$39,300 - \$65,100	2,026
Market penetration by 50 units	2.5%

Estimated % of income-eligible households	
Consumer debt problems	60%

Number of income-eligible households	
Who can qualify for financing	810
Market penetration by 50 units	6.2%

Appendix E– Conditions Precedent to Disbursement of Loan Funds

The excerpt below is from a sample set of loan documents, detailing requirements that the project must meet, either before funding, or before retention will be released:

There exists no event of default nor any act, failure, omission or condition that would constitute an event of default under this agreement;

Borrower holds title to the property or is acquiring title to the property simultaneously with the disbursement of the loan proceeds;

Borrower has delivered to the County a copy of a corporate resolution authorizing Borrower to obtain the Loan and all other Approved Financing, and to execute the Loan Documents;

There exists no material adverse change in the financial condition of Borrower from that shown by the financial statements and other data and information furnished by Borrower to the County prior to the date of this Agreement;

Borrower has furnished the County with evidence of the insurance coverage meeting the County requirements;

Borrower has executed and delivered to the County the Loan Documents and has caused all other documents, instruments, and policies required under the Loan Documents to be delivered to the County;

The Deed of Trust, the Regulatory Agreement, and the Intercreditor Agreement have been recorded against the Property in the Office of the Recorder of the County of Contra Costa;

A title insurer reasonably acceptable to the County is unconditionally and irrevocably committed to issuing an LP-10 2006 ALTA Lender's Policy of title insurance insuring the priority of the Deed of Trust in the amount of the Loan, subject only to such exceptions and exclusions as may be reasonably acceptable to the County, and containing such endorsements as the County may reasonably require. The Borrower shall provide whatever documentation (including an indemnification agreement), deposits or surety is reasonably required by the title company in order for the County's Deed of Trust to be senior in lien priority to any mechanics liens in connection with any start of construction that has occurred prior to the recordation of the Deed of Trust against the Property in the Office of the Recorder of the County of Contra Costa;

All environmental review necessary for the construction of the Development has been completed, and Borrower has provided the County evidence of planned compliance with all NEPA and CEQA requirements and mitigation measures applicable to construction, and evidence of compliance with all NEPA and CEQA requirements and mitigation measures applicable to preconstruction; The County has determined the undisbursed proceeds of the Loan, together with other funds or firm commitments for funds that Borrower has obtained in connection with the construction of the Development, are not less than the amount the County determines is necessary to pay for the construction of the Development and to satisfy all of the covenants contained in this Agreement and the Regulatory Agreement;

Borrower has obtained all permits and approvals necessary for the construction of the Development;

The County has received and approved the Bid Package for the subcontractors for the construction of the Development pursuant to the loan agreement;

The County has received and approved the general contractor's construction contract that the Borrower has entered or proposed to enter for the construction of the Development pursuant to the loan agreement;

The County has received and approved labor and material (payment) bonds and performance bonds as required pursuant to the loan agreement;

Borrower has closed all loans and equity that are part of the approved financing described in the loan agreement and has already received or is eligible to receive the funds;

The County has received fully executed copies of loan documents for the other lenders or investors
The County has received reasonable evidence that the local match requirements have been satisfied pursuant to the loan agreement; and

The County has received a written draw request from Borrower, including backup documentation as detailed in the loan agreement.

Conditions Precedent to Disbursement of Retention.

The County is not obligated to disburse the loan retention unless the following conditions precedent are satisfied:

The County has received a completion report from Borrower setting forth: (i) the income, household size, race, and ethnicity of Tenants of the County-Assisted Units; (ii) and the unit address, unit size, rent amount and utility allowance for all County-Assisted Units;

The County has received a Final Cost Certification for the Development from Borrower showing all uses and sources;

The County has received from Borrower copies of the certificate of occupancy or equivalent final permit sign-offs for the Development;

The County has received from Borrower current evidence of the insurance coverage meeting the requirements of Section 4.16 below;

The County has received from Borrower a form of Tenant lease;
The County has received from Borrower a Marketing Plan, Tenant Selection Plan, and Social Services Plan;

The County has received from Borrower evidence of marketing for any vacant County-Assisted Unit in the Development such as copies of flyers, list of media ads, list of agencies and organizations receiving information on availability of such units, as applicable;

The County has received from Borrower all relevant contract activity information, including compliance

with Section 3 and MBE/WBE requirements;

If Borrower was required to comply with relocation requirements, the County has received from Borrower evidence of compliance with all applicable relocation requirements;

The County has received from Borrower a copy of the management agreement and contact information for the property manager of the Development and the name and phone number of the on-site property manager;

If Borrower is required to pay prevailing wages under the Davis-Bacon Act (40 U.S.C. 3141-3148), the County has received confirmation that Borrower has submitted all certified payrolls to the County, and any identified payment issues have been resolved, or Borrower is working diligently to resolve any such issues;

The County has received from Borrower evidence of compliance with all NEPA mitigation requirements as set forth in the loan agreement; and

The County has received a written draw request from Borrower, including all required document as set forth in the loan agreement.

Appendix F – CHDO Qualification Requirements

The following CHDO requirements are consistent with the HOME final rule published July 24, 2013 in the Federal Register. All CHDO's certified in the past must recertify with each application and prior to executive on loan documents with the requirements listed below. The information below refers to the definition of Community Housing Development Organizations (CHDOs) in Subpart A, 92.2 of the HOME Rule. Submit documentation for each of these requirements with an application for funding.

- Must be a nonprofit organization under State or local laws as evidenced by a Charter, or Articles of Incorporation.

If chartered by a State or local government, the State or local government may not appoint: (1) more than one-third of the membership of the organization's governing body; (2) the board members appointed by the State or local government may not, in turn, appoint the remaining two-thirds of the board members; and (3) no more than one-third of the governing board members are public officials. Officers and employees of the governmental entity may serve as Board members of a CHDO (subject to the one-third appointment limitation), but they cannot serve as officers or employees of the CHDO.

If the CHDO is sponsored or created by a for-profit entity, the for-profit entity may not appoint more than one-third of the membership of the CHDO's governing body and the board members appointed by the for-profit entity may not, in turn, appoint the remaining two-thirds of the board members. Officers and employees of the for-profit entity may serve as Board members of a CHDO (subject to the one-third appointment limitation), but they cannot serve as officers or employees of the CHDO.

- Has a tax exemption ruling from the Internal Revenue Service (IRS) under Section 501(c) of the Internal Revenue Code of 1986, or be a subordinate of a central organization under IRC 905, be a wholly-owned entity that is regarded as a separate entity for tax purposes.
- Has among its purposes the provision of decent housing that is affordable to low and moderate-income people.
- Conforms to the financial accountability standards of Attachment F of OMB Circular A-110, "Standards for Financial Management Systems."
- Has a demonstrated capacity for carrying out activities assisted with HOME funds.
- Has paid employees (not contractors) with housing experience appropriate to the role the nonprofit expects to have in projects (i.e. owner, developer, or sponsor).
- Has a history of serving the community where housing to be assisted with HOME funds will be used.

The CHDO or its parent organization must be able to show one year of serving the community from the date the participating jurisdiction provides HOME funds to the organization. In the statement, the organization must describe its history (or its parent organization's history) of

serving the community by describing activities which it provided (or its parent organization provided), such as developing new housing, rehabilitating existing stock, and managing housing stock, or delivering non-housing services that have had lasting benefits for the community, such as counseling, food relief, or childcare facilities. The statement must be signed by the president of the organization or by a HUD-approved representative.

- Maintains at least one-third of its governing board's membership for residents of low-income neighborhoods, other low-income community residents, or elected representatives of low-income neighborhood organizations. (The term "community" is defined as one or several neighborhoods, a city, county, or metropolitan area.)
- Provides a formal process for low-income, program beneficiaries to advise the organization in all of its decisions regarding the design, site, development, and management of all HOME-assisted affordable housing projects,
- Not under control, or receiving direction from individuals or entities seeking profit from the organization.

If sponsored or created by a for-profit entity, the for-profit entity's primary purpose may not include the development or management of housing and the CHDO must be free to contract for goods and services from vendor(s) of its own choosing.

Appendix G – Section 3 Plan

Section 3 is a provision of the Housing and Urban Development Act of 1968. It is intended to ensure employment and contracting opportunities for low and very low income persons or businesses residing within the community where a HUD-funded project is located. Section 3 is specific to HUD funded projects and activities involving housing construction, rehabilitation (including reduction and abatement of lead-based paint hazards), demolition, or other public construction. Contra Costa County is a recipient of HUD funding through its HOME Investment Partnership Assistance (HOME), Community Development Block Grant (CDBG), Housing Opportunities for Persons with AIDS (HOPWA), Emergency Shelter Grants (ESG), and Neighborhood Stabilization Program (NSP) Programs. Therefore, the County's allocation of the above program funds trigger Section 3 requirements whenever the project creates the need for NEW employment, contracting or training opportunities.

The complete Section 3 plan is available by request and will be provided to project applicants at a post award technical assistance meeting.