

Guidelines
for
Purchasing and Developing
Permanent Housing
through the
Regional Center
Community Placement Plan

for

**Fiscal Year 2016-17 Requests and
Modifications**

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Department of Developmental Services

Community Placement Plan Housing Guidelines Fiscal Year 2016-17

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Department of Developmental Services

Guidelines for Purchasing and Developing Permanent Housing through the Regional Center Community Placement Plan (Housing Guidelines)

Note: The Effective Date of the Housing Guidelines is July 1, 2016. These Housing Guidelines apply to all Housing Proposals submitted by the Regional Center (RC) to the Department of Developmental Services (Department or DDS) after the Effective Date; and where a non-profit organization (NPO) will be the fee owner of a property purchased using Community Placement Plan (CPP) Start-Up funds (CPP funds).

I. Introduction

The Department created these Housing Guidelines to achieve the development of safe, affordable, and sustainable housing for individuals with intellectual or developmental disabilities eligible to receive services from the RC (consumers). To protect the State of California's (State) interest, the Department uses CPP funds to facilitate the development of permanent housing in the community that will be used exclusively, in perpetuity,¹ by consumers. In collaboration with the RC, an NPO may purchase real property through the "Buy-It-Once" model or may develop multiple restricted units in a multi-family project.

II. Authority

Development of permanent housing must adhere to resource development provisions pursuant to Welfare and Institutions Code (WIC) Section 4418.25, in which the development of community resources is allowed within the RC's approved CPP.

Effective June 2014, new statutory provisions were added to the Department's existing authority to develop community resources. These provisions, along with related program requirements, are described in Senate Bill 856 (Chapter 30, Statutes of 2014) and are added to WIC Sections 4684.80, 4684.81, and 4698. Pursuant to these provisions, the Department now is required to support development of Enhanced Behavioral Supports Homes and Community Crisis Homes as new models of care for consumers requiring intensive services and supports due to challenging behaviors. The Enhanced Behavioral Supports Homes are statutorily required to be established as a pilot program and implemented, until January 1, 2020, to test the effectiveness of these homes.

¹For purposes of these Housing Guidelines, "in perpetuity" is interchangeable with "for 99 years."

III. CPP Housing Process Overview

Pursuant to these Housing Guidelines, a RC must submit a Housing Proposal describing how the Department-approved CPP funds will be used for the acquisition (purchase) of housing and/or the modification of the housing to meet the unique needs of consumers. (See also Appendix I.) Approval and funding priority will be aligned with the priorities and goals stated in the Fiscal Year (FY) 2016-17 CPP Guidelines issued by the Department on March 3, 2016 (CPP Guidelines). The Department supports collaborative proposals between two or more RCs to develop specialized housing resources to meet the statewide needs of consumers.

Once the Housing Proposal is approved, the Department will issue a Letter of Conditional Approval authorizing the RC to identify one or more prospective properties that will be owned by the NPO, or to begin renovation or construction activities on a property that is already owned by the NPO.

When the NPO has signed a purchase agreement to purchase a property approved by the RC, the RC shall submit a Housing Acquisition Request (HAR) to the Department in accordance with Section X.B of these Housing Guidelines. The RC shall not authorize the use of CPP funds to purchase real property prior to the submission and the Department's approval of a HAR.

Single-Family Housing Proposal

The Housing Proposal must:

- Be consistent with the RC's authority to conduct resource development as described in WIC Section 4418.25 and be submitted and approved through the process specified in the FY 2016-17 CPP Guidelines and these Housing Guidelines.
- Demonstrate a contractual agreement between the RC and NPO that will own the property through an Agreement or Contract that requires the RC and NPO to obtain the Department's conditional approval for its Housing Proposal prior to proceeding with the acquisition of real property. (See also Section V.A.ii.b of these Housing Guidelines regarding the submission of a Housing Proposal prior to the selection of an NPO.)
- Demonstrate a separation of property ownership from the delivery of services and supports within the home, i.e., the NPO cannot be both the property owner and the service provider.
- Contain sufficient detail for the Department to determine the intended use of the requested funds.
- Require the NPO to comply with the terms of these Housing Guidelines, including but not limited to its execution of the Department's restrictive covenant (Exhibit A) for each property it acquires or renovates.

- Demonstrate compliance with State fiscal oversight, accountability, and audit requirements consistent with WIC Section 4648.1 and California Code of Regulations, Title 17, Section 54326.
- Demonstrate that ongoing costs are supported and will be met within the provisions of the median rate requirement in WIC Sections 4681.6, 4689.8, and 4691.9, and other types of CPP residential facility rate structures implemented by the Department.
- Specify that the services and supports from CPP housing development must be eligible for Federal Financial Participation (FFP) consistent with WIC Section 4418.25(b)(5).

The approval of a Housing Proposal is contingent on the RC's current and continuing compliance with the Housing Guidelines and the RC's ability to promptly and directly provide the Department, as needed or as requested, current, complete and accurate information as specified in these Housing Guidelines. Consistent with WIC Section 4648.1, the RC agrees to all monitoring by the Department, including examination and review of books, records, documents and files, in whatever form they exist, of the named NPO and its affiliate organizations, and interviews with its principals, agents, and employees.

Multi-Family Housing Proposal

The RC must submit a Multi-Family Housing Proposal when at least one unit is developed as part of a multi-family project. A multi-family project is defined as a structure or set of structures with common financing, ownership, and management and which collectively contains five (5) or more units. For the purpose of these Housing Guidelines, a unit includes, but is not limited to, a studio, apartment, townhouse, duplex, etc., but does not include a bedroom within a unit. The Multi-Family Housing Proposal describes how the RC plans to use Department-approved CPP funds to increase affordable and accessible "set-aside" units that are restricted in use for eligible consumers. The RC must contract with the ownership entity to create these deeply subsidized units.

If the RC is approved for a multi-family project consistent with the process specified in the CPP Guidelines, the RC must contact the Department not less than six (6) months prior to submission of a Multi-Family Housing Proposal due to the additional planning and workload associated with the review of the multi-family housing proposal. The RC must submit a Multi-Family Housing Proposal within 45 days from the date the RC selects the NPO for the project or awards the project to the NPO.

Appendix N of these Housing Guidelines provides additional guidance on specific requirements and procedures for a Multi-Family Housing Proposal.

IV. CPP Housing Contractual Provisions

At least the following contracts/agreements must be executed for each CPP property developed as part of a Housing Proposal submitted under these Housing Guidelines:

- A contract/agreement between the RC and the NPO (the RC-NPO contract). The RC may execute separate agreements with the NPO regarding the acquisition or renovation of a project, or incorporate the terms of such agreements into the RC-NPO contract.
- A contract, agreement, and/or vendorization between the RC and service provider.
- A lease agreement between the NPO and the service provider (the NPO-service provider lease).

The RC may complete such applicable contracts/agreements at different times during the housing development process, but must submit them to the Department according to Appendix H.

The purpose of the CPP contractual provisions is to ensure that the RC, NPO, and the service provider enter into appropriate written contracts related to the use of CPP funds and the timely development of any CPP-funded project (acquisition and renovation, or new construction). The applicable contracts/agreements must include, at a minimum, the following:

- A. **PROJECT DEVELOPMENT:** The RC-NPO contract must at minimum describe the following: the tasks to be accomplished; who is responsible for those tasks; accountability by each entity for the timely development of the project, etc. The agreement/contract should demonstrate to the satisfaction of the Department how the NPO will comply with all state and local building requirements, including the RC's verification that all projects have, or shall receive, all required permits prior to the start of any demolition, construction, or renovation.
- B. **HOUSING AGREEMENTS:** The provisions in the RC-NPO contract must be consistent with the provisions in these Housing Guidelines, inclusive of the CPP Property Documents (see Appendices described below). In the event of any inconsistencies between these Housing Guidelines and the RC-NPO contracts, these Housing Guidelines shall control.

Following approval, the RC must use the Department-approved escrow instructions to close escrow on the CPP property. Escrow contractual provisions must specify that the escrow company cannot close on the property until all of the requirements set forth in the escrow instructions have been satisfied.

- C. **LEASE RATE ADJUSTMENT:** The RC-NPO contract and service provider lease must contain a provision for the adjustment of the lease rate and the service

provider reimbursement/service rate upon reduction or elimination of the debt service or other operating costs.

Once the Department-approved senior lender loan on the project property is paid in full, the RC must review the existing service provider rate agreement, along with the lease rate, to reassess the need for any adjustments as a result of a redirection of the debt service.

- D. **REPLACEMENT RESERVE ACCOUNT:** The NPO-service provider lease includes a description of a replacement reserve account. Funds in the account are intended for the major repair and replacement of capital improvements related to the property, including but not limited to, foundation and floor slab, roofing, plumbing, electrical, structural components of the exterior and interior and load bearing walls, fencing, fire sprinkler systems and related electrical panels, major appliances such as stove, refrigerator, and oven/range, etc. (See also Section M.iv of these Housing Guidelines for more details on the replacement reserve account.)
- E. **MAINTENANCE:** The NPO-service provider lease contains a provision about the terms for funding short- and long-term maintenance separate from the replacement reserves described above. The purpose of this provision is to clearly outline the responsibilities of the service provider and the NPO for short- and long-term maintenance.
- F. **WELFARE PROPERTY TAX EXEMPTION:** When the service provider is a 501(c)(3) non-profit organization, the RC-NPO contract obligates the NPO to file a property tax exemption application as early as possible after the NPO purchases the property and has signed a lease with the service provider. In any event, this process should occur not later than the first day the first consumer occupies the property. Note: The NPO and the service provider each must have an Organizational Clearance Certificate from the State Board of Equalization as a condition to obtaining an exemption from real property taxes from the local county tax assessor.
 - i. In the instances when the property tax is paid directly by the NPO, and the property tax cost is incorporated into the lease payment, the lease agreement must include provisions requiring the reduction of the rent based on the actual county property tax once the exemption is granted.
 - ii. In the instances when the property tax is paid directly by the service provider (additive to the base rent rate), the lease must spell out such an agreement.
 - iii. In the instances when rent is reduced under either (a) or (b) above, the RC shall reduce the service provider reimbursement/service rate by the same amount, but ensure this rate is sufficient to cover the operational expenses of the project.

- iv. In the instances where a property is no longer eligible for a tax exemption, the RC must describe the process that will be used for managing the increased expense.

- G. **CPP FUND RECOUPMENT:** The RC-NPO contract describes fair and equitable recoupment of the CPP funds in the event that, for any reason whatsoever, the property will not be completed, the project does not conform to the purposes of these Housing Guidelines, or the real property ceases to be used as housing for consumers. On a case-by-case basis, the Department will review RC requests concerning extraordinary circumstances that impact the project's sustainability. Note: A temporary cessation of use of the housing by consumers due to casualty or temporary condemnation not caused by the NPO shall not require the NPO to repay CPP funds.

- H. **UNUSED CPP FUNDS:** The RC-NPO contract must address the proposed use of any CPP funds that were not used toward the completion of the proposed project. Examples of unused CPP funds include (acquisition or renovation) that were not used for the project, permanent financing, closing costs, reimbursements to the developer, NPO, or RC for acquisition, pre-development, or renovation/construction costs, or reimbursement due to tax exempt status. The RC must obtain the Department's approval prior to the use of any unused CPP funds of five thousand dollars (\$5,000), or greater. Upon reconciliation of all funds, any unused balance of CPP funds must be returned to the Department within 120 days of the reconciliation of funds. In addition, the provisions in the contract must ensure that permanent financing and CPP funds are not utilized for the same cost/expense.

- I. **DISCONTINUED PROJECT:** The RC-NPO contract requires the NPO to return CPP funding, to the RC and the Department for a project that will not be completed. The RC should notify the Department immediately if a project is to be discontinued, so that the Department can work with the RC to determine the best alternative use for those CPP funds.

- J. **PROJECT COSTS:** The RC-NPO contract specifies the projected cost to acquire and/or renovate the property, or projected new construction costs.

- K. **DEVELOPER FEE:** The RC-NPO contract describes the methodology for establishing the proposed developer fee(s) from all sources. The developer fee methodology must clearly describe the basis for calculating the fee(s).

- L. **PERFORMANCE ASSURANCES:** A description of how the RC and NPO provide for the obligation of the NPO to have its general contractor obtain a payment and performance bond to cover all of expected costs to renovate the proposed housing project(s).

If the NPO cannot secure a payment and performance bond, the RC may request approval from the Department to use all of the following alternative performance assurances:

- i. Contract provisions based on achievement of project milestones.
- ii. Review and verification of project performance and progress by a professional construction manager prior to the release of contractor payments.
- iii. A provision in the RC-NPO contract that the NPO must require its contractor to accept payments based upon performance, as well as, commit to submitting mechanics lien releases to the RC, if applicable, when and if a contract is signed with a contractor.
- iv. The RC shall retain ten percent (10%) of the renovation funds until the work or improvements are completed. These funds would be released to the NPO or its contractor only when a Certificate of Occupancy (or its equivalent) is provided by the local agency (e.g., a building inspector), construction manager/consultant, and upon delivery of appropriate mechanic's lien releases and final walk-through approval by the RC and the RC's approval of the work or improvement.

The RC must receive Department approval to use the alternative performance assurances prior to the start of construction.

M. REGIONAL CENTER MONITORING REQUIREMENTS:

- i. Property Safety Standard: After the renovation work is complete and during occupancy of the property by consumers, the RC must annually certify in Appendix M that, to the RC's best knowledge, the interior, exterior, and any detached structures of the proposed property are in good working condition and properly maintained, and that there is no threat to the health, welfare, and safety of consumers living at the property, staff, visitors, etc.
- ii. Project Progress: The RC shall regularly monitor CPP projects to ensure the satisfactory progress, of all the Department-approved Housing Proposal acquisition and renovation, as outlined in Section X. of these Housing Guidelines, and shall report the progress of the projects on a quarterly basis.
- iii. Insurance: The RC shall ensure that the NPO procures and maintains:
 - a) Property hazard insurance equal to the replacement value of the property. The Department must be named as loss payee.
 - b) Liability insurance of one million dollars (\$1,000,000) per occurrence and two million (\$2,000,000) in the aggregate of general liability requirements related to the CPP property consistent with the DDS Deed of Trust. The Department must be named as additional insured. The RC also shall ensure the service provider maintains applicable liability insurance.

The recommended deductible for all policies is ten thousand dollars (\$10,000) per policy. The proof of insurance should indicate the specific name of the project and the property address.

- iv. Replacement Reserve Account: The RC shall ensure that the NPO maintains a replacement reserve account for all CPP properties and provides an accounting of the replacement reserve funds for each CPP property as part of annual reporting. A separate bank account shall be designated for replacement reserve funds. Unless otherwise required by the RC, the NPO may deposit replacement reserve funds for multiple properties in one bank account. The RC and NPO must not use replacement reserve funds designated for one CPP property to cover costs of another CPP property.

Prior to using funds in the replacement reserve account, the NPO must obtain the RC's approval. The RC must ensure the NPO has exhausted all other sources of funding, e.g., insurance, product warranties, etc., before using replacement reserve funds. If a replacement reserve account needs to be established for a CPP property or a Department-approved replacement reserve amount needs to be increased, the RC may submit a written request to the Department for review.

The RC shall ensure the NPO conducts a replacement reserve analysis at the time a HAR is submitted. An updated replacement reserve analysis shall be completed and submitted to the Department not less than every five (5) years thereafter. The RC shall have the option to require that the replacement reserve analysis is completed by an independent third party. The Department will review a proposed change in the replacement reserve amount based upon the replacement reserve analysis.

- v. Appraisal: The RC shall ensure the purchase price of real property is supported by the appraisal report for the appraised value of the property. An appraisal report completed for the senior lender(s) is acceptable to meet this requirement.

V. CPP Housing Proposal Contents

A. Housing Proposal Overview

The Housing Proposal shall:

- i. Describe the type of housing to be developed, whether the Housing Proposal is for acquisition and renovation, or new construction. The type of housing may include, but is not limited to, Adult Residential Facility, Residential Care Facility for the Elderly, Specialized Residential Facility, Adult Residential

Facility for Persons with Special Health Care Needs (ARFPSHN), Family Teaching Home, or units within a multi-family housing development.²

- ii. Identify the applicable NPO that will acquire ownership of the property.
 - a) In instances where the developer is different than the NPO, specify a time certain that the NPO owner-entity will acquire the property. The Department may request additional information including, but not limited to, information that demonstrates the developer's experience, financial strength, ability to develop a project, etc.
 - b) If the RC has not selected an NPO at the time the Housing Proposal is submitted to the Department, the RC may describe the process that will be used to select an NPO or the pending Request for Proposal process. Once the RC has selected the NPO, all documents required in Appendix II must be submitted to the Department for review and approval, prior to the NPO entering into any purchase contract for real property.
- iii. Describe how the proposed property meets the needs (e.g., accessibility/universal design, behavioral, medical, etc.) of consumers who are moving from a developmental center, an Institution for Mental Disease (IMD) facility ineligible for FFP, an out-of-state placement, and/or consumers who are at risk of admission to FDC or SDC due to an acute crisis, an IMD facility ineligible for FFP, and/or out-of-state services. The Department encourages the RCs to design homes that allow individuals with developmental disabilities to remain in their homes as their physical conditions change due to age or illness (i.e., "aging in place" or "universal design"). The California Department of Housing and Community Development created a resource guide on aging in place/universal design, which can be accessed electronically at:
<http://www.hcd.ca.gov/hpd/aginginplace.pdf>
- iv. Describe the type of neighborhood for the proposed property (e.g., single family, multi-family, commercial, etc.), location selection criteria (transportation, access to services, etc.) and the availability of supportive services and vocational programs that are available for consumers residing in the proposed development.
- v. Follow guidance issued by the federal Centers for Medicare & Medicaid Services regarding settings that have the effect of isolating individuals receiving services and supports in the community. (See also Enclosure A of the CPP Guidelines.)

² If the RC has been approved to develop a multi-family project, the RC should contact the Department not less than six (6) months prior to submitting a Multi-Family Housing Proposal. (See also Appendix N.)

- vi. Require the project(s) to provide for automatic fire sprinkler systems.

B. Financial

The Housing Proposal shall include the following financial information:

- i. A description of how the RC and the NPO will maintain accounting, financial, and other records related to the use of CPP funding.
- ii. Unless waived by the Department, a minimum down payment amount of twenty percent (20%) of the property's purchase price using Department-approved CPP funds for acquisition. For multi-family projects, the amount of CPP funds depends on either the number of units to be occupied by consumers, or on the scope of the entire project.
- iii. A detailed Sources and Uses of funds. If the Sources and Uses of funds is not submitted, the proposal must include a budget that details the amount of funds targeted for acquisition, renovation, administrative costs of the NPO, (to include developer fees), pre-development costs, renovation, and transition estimates.
 - a) The Sources and Uses of funds will need to be updated at the following times:
 - Upon the acquisition of the property.
 - Upon approval of the renovation bid/budget.
 - Upon any material project changes, e.g., capacity, additional renovation expenses, schedule of development, etc.
 - At reconciliation of CPP funds upon completion of each project.
 - At any time requested by the Department.
 - b) Priority will be given to proposals demonstrating leveraging of funds from grants, gifts and other like sources, rather than, or in addition to, funds from long-term financing.
 - c) Entities providing project funds may include, but are not limited to, federal, state and local housing programs, private parties, banks, and foundations.
- iv. The terms of the mortgage loan(s).
 - a) If long-term funding is obtained in part through a loan, include the proposed loan terms.

- b) The mortgage loan shall not exceed a 15-year term without the Department's approval. The Department will consider other proposed financing terms on a case-by-case basis.
 - c) Adjustable rate mortgage loans and balloon payments are not permitted, without prior approval by the Department.
- v. An estimated itemized operating budget in a format approved by the Department.
- vi. A projected 15-year pro forma budget that demonstrates the project's financial feasibility. The budget:
 - a) Anticipates income from all sources to be used to fund and operate the project over fifteen (15) years.
 - b) Accounts for required replacement reserve deposits.
 - c) Estimates the total amount of loan or mortgage payment(s), property (hazard) and liability insurance, home warranty contract, operating expenses, property management expenses, and property taxes (if applicable).

C. NPO Documents

The RC shall submit with the Housing Proposal, the required NPO documents consistent with Appendix I. (If the RC has not yet selected an NPO, the RC will submit these documents at a later date.) The RC must submit a Certificate of Status of Good Standing issued by the California Secretary of State, valid within 240 days of Housing Proposal submission. As applicable, the RC may elect to submit these required NPO documents one time annually with the first Housing Proposal of the funding year, excluding the Certificate of Status of Good Standing. If any of this information changes, the RC must provide the Department with the updated document(s), as applicable.

D. Proposed Schedule of Development/Implementation Plan

The RC shall provide a detailed schedule of the proposed development process outlining estimated timeframes and conditions for project completion that includes the following:

- i. Realistic, structured timeframes projected at the time of submittal for the type of projects proposed by the RC.
- ii. Sequenced schedule of development activities from property identification to occupancy. If the project contains more than one property, each property must have a separate implementation plan.

- iii. A description of all strategies (e.g., real estate agent, specific online property search tools, direct marketing, government-owned properties, etc.) that will be used to identify properties.
- iv. As required above, activities to comply with all state and local building and occupancy requirements, including without limitation the RC's receipt of verification that any project has received all required permits prior to the start of any demolition, construction, or renovation.
- v. An outline of the process to request, from the Department, an extension which includes, but is not limited to, a revised timeline, notification, and a plan for mitigation related to additional time lost.
- vi. If the project is to be licensed, a courtesy notification procedure, as determined by the RC, must be included in the Housing Proposal to inform the local licensing entity regarding plans for acquiring, developing, and/or renovating/rehabilitating homes within its jurisdiction.

VI. CPP Property Documents

After the Department has issued the approval of the HAR, the following CPP Property documents shall be used at the closing of the acquisition of the CPP property: (i) Restrictive Covenant (Appendix A); (ii) DDS CPP Deed of Trust (Appendix D); (iii) DDS Community Placement Plan Promissory Note Secured by Deed of Trust (Appendix B) or Profit Participation Agreement (Appendix C); (iv) Agreement to Provide Notice and Cure Rights (Appendix G); and (v) each Request for Notice (Appendix E and Appendix F). Collectively, these documents are the CPP Property Documents. All CPP Property Documents shall be executed, and the applicable recordable documents submitted to escrow, together with the loan document(s) from the senior and/or other lenders. Consistent with the Department-approved escrow instructions, escrow will not close until all of the required applicable CPP Property Documents have been received by escrow.

Changes to the required documents and any future encumbrances against the property are not allowed without the prior written consent of the Department. Proper adherence to these requirements will ensure that the property will be properly maintained, in perpetuity, for use by consumers.

The RC must ensure that the following CPP Property Documents are completed with each property owned by an NPO consistent with the requirements outlined in these Housing Guidelines.

A. Restrictive Covenant

An approved project (property) shall have a recorded restrictive covenant (the DDS Restrictive Covenant) entered into between the RC and NPO (owner of the property) and concurrently recorded with other DDS Property Documents, subordinate only to the senior lender or governmental agency lender's deed of

trust, if any. The purpose of the DDS Restrictive Covenant is to restrict the use of the property as housing for consumers in perpetuity. Accordingly, the DDS Restrictive Covenant shall include a restriction on the use of the property as housing for consumers in perpetuity, from the date of the close of escrow, on which the NPO becomes the fee owner of the property.

The enclosed Restrictive Covenant template (Appendix A), as approved by the Department, should be utilized. The RC may submit a request for approval of an alternative document; however, it must contain language that is substantially similar to Appendix A. An alternative restrictive covenant proposed by the RC must be consistent with these Housing Guidelines that includes, but is not limited to, the following:

- i. Third Party Beneficiary: A requirement that the Department is named as a third party beneficiary.
- ii. Default Notice: A requirement that the RC receives written notification from the NPO within five (5) days upon any default by the NPO under its loan with its lender(s).
- iii. Consent Notification: A requirement that no real property encumbrance, sale, pledge, assignment, hypothecation, or conveyance of the property, or any of its interest therein, including the benefit of use of the property for consumers, occur without the prior written consent of the Department.
- iv. Agreement to Provide Notice of Cure Rights: A requirement that the RC must ensure the NPO obtains an executed Agreement to Provide Notice and Cure Rights from the senior lender as part of the close of escrow (in a form substantially similar to Appendix G).

In the event of a breach or violation of the provisions of the DDS Restrictive Covenant, the Department may give written notice to the NPO. If the breach or violation is not cured to the satisfaction of the Department within the time period specified in the notice, which shall not be less than twenty (20) days, the Department may declare a default in accordance with law and equity, and the Department may seek legal and equitable remedies.

Note: The Department may not approve or conditionally approve any Housing Proposal until such RC has caused a DDS Restrictive Covenant to be signed and recorded on all existing properties within such RC's catchment area that have been purchased with CPP funds. If, as of the Effective Date of these Housing Guidelines, (i) an NPO is the fee owner of a property purchased in part with CPP funds, and (ii) the NPO's property is not yet encumbered by a recorded DDS Restrictive Covenant, then the RC shall cause the NPO to execute and record a DDS Restrictive Covenant consistent with the restrictive covenant requirements set forth in these Housing Guidelines before the Department will fund any new Housing Proposal from such RC.

B. DDS CPP Deed of Trust

An approved project (property) shall have a deed of trust in favor of the Department (DDS Deed of Trust) signed by the NPO (as owner of the property) and recorded concurrently with the DDS Restrictive Covenant on the day the NPO becomes the fee owner of the property (as part of the close of escrow). The DDS Deed of Trust may subordinate only to a senior lender's deed of trust when the NPO obtains a secured loan from an institutional lender or governmental agency lender to finance a portion of the purchase price. The enclosed sample DDS Deed of Trust (Appendix D) is approved by the Department for use by the RC. The RC may submit a request for approval of an alternative format; however, it must contain content substantially similar to Appendix D.

Within the DDS Deed of Trust, the Department delegates, unless delegation is withdrawn by the Department, non-monetary obligations under the DDS Deed of Trust to the RC, including, but not limited to, responsibility to maintain current property (hazard) and liability insurance and perform property inspections.

C. Profit Participation Agreement or DDS Community Placement Plan Promissory Note Secured by Deed of Trust

The NPO shall either (i) enter into a Profit Participation Agreement (PPA), or elect to (ii) execute a DDS Community Placement Plan Promissory Note Secured by Deed of Trust (Promissory Note), as follows:

- i. **PROFIT PARTICIPATION AGREEMENT:** The NPO shall execute with acknowledgement a Department-approved PPA reflecting the receipt of CPP funds. This agreement must be recorded against the property on the same day the NPO becomes the fee owner of the property (as part of escrow) and recorded concurrently with the DDS Deed of Trust and DDS Restrictive Covenant. The PPA will be recorded in order to provide notice to any potential purchaser that CPP funds must be paid to the Department upon conveyance and that various approvals are required in order to affect any valid sale of the property. A sample of a Department-approved PPA is included as Appendix B.
- ii. **PROMISSORY NOTE:** The RC and NPO may elect the option to execute a promissory note, in lieu of a PPA as described above. If so elected, the NPO shall execute with acknowledgement a Department-approved Promissory Note in favor of the Department reflecting the receipt of CPP funds. The Promissory Note must be delivered to the Escrow Officer prior to the day the NPO becomes the fee owner of the property (close of escrow). In consideration of the receipt of CPP funds, the NPO agrees that occupancy of the property will be restricted in perpetuity for consumers. This obligation shall continue even if the CPP funds are repaid. The DDS Restrictive Covenant may only be terminated consistent with the terms of the DDS Restrictive Covenant or as may be acceptable to the Department

at its sole discretion. The Department-approved Promissory Note is included as Appendix C.

Should the RC and NPO elect to submit alternative language for the documents in Appendix A, Appendix B, or Appendix D, specified above, the RC and NPO should anticipate a minimum turnaround time of thirty (30) days, although the Department will use reasonable efforts to respond within sixty (60) days.

D. Lender Notices

This section applies when the NPO obtains financing from a lender other than the Department to assist in the acquisition and renovation, or construction of the property.

The RC must ensure the NPO obtains an executed Agreement to Provide Notice and Cure Rights from the senior lender by not later than the close of escrow (in a form substantially similar to Appendix G). The RC shall provide the form to the NPO for coordination of its execution with the lender. A copy of the executed Agreement to Provide Notice and Cure Rights shall be submitted by the RC to the Department no later than fifteen (15) days after close of escrow.

In addition, the RC must record Requests for Notice in the form provided in Appendix E [Request for Notice (benefit of the Department)] and Appendix F [Request for Notice of Default (benefit of the RC)]. Each Request for Notice shall be recorded against the property on the same day the NPO becomes the fee owner of the property (as part of escrow) and recorded concurrently with the DDS Property Documents.

E. Order of Recordation

The Department's documents may only be recorded subordinate to an approved senior lender's deed of trust. The Department's escrow instructions, enclosed as Appendix L, are to be used by the RC to facilitate the recordation of the Department's documents.

F. Title Insurance

The RC must ensure the NPO procures lender's title insurance for the Department. The amount of such insurance shall be equal to the full value of the CPP acquisition and renovation funds the RC provides to the NPO for such property. The RC also must ensure that the NPO procures owner's title insurance. The cost of both policies of title insurance is an allowable acquisition cost as referenced in VII.A. of these Housing Guidelines.

G. Escrow Instructions

The use of Department-approved escrow instructions is required in each CPP housing acquisition. Consistent with these escrow instructions, escrow cannot

close until all of the requirements outlined in the escrow instructions have been satisfied. The Department-approved escrow instructions are included as Appendix L.

The RC may only release CPP funds into escrow following receipt of the Department's written approval of a submitted HAR. See also Section X.B. of these Housing Guidelines.

VII. Eligible Acquisition and Renovation Costs

CPP funds shall be used only for acquisition and renovation of real property as described below. CPP funds cannot be encumbered, expended, or otherwise legally obligated to an NPO or developer until the RC receives the Department's approval of its Housing Proposal.³

A. Acquisition Costs

Eligible CPP costs for the acquisition of real property include, but are not limited to, down payment, pre-development costs, due diligence costs, closing costs, property inspections and replacement reserve analysis, developer fee, environmental mitigation reports, legal, accounting, consultant, and project management fees, lender's title insurance, home warranty contract, etc. Once the Department approves a HAR, some pre-development costs relating to such CPP property may be eligible for reimbursement even if the prospective property is not eventually purchased.

B. Renovation Costs of NPO Owned Property

To ensure that the unique needs of individuals with a wide-range of disabilities can be accommodated, CPP funds may be used to renovate or construct new improvements involving changes to the layout of real property and amenities.

Eligible costs for the renovation of real property include, but are not limited to, the following:

- i. Specialized items that provide benefit to meet consumers' needs, (e.g., ramps, bathroom modifications, hardened or softened walls, etc.). The consumers' identified needs should be comprehensively evaluated prior to the start of renovation or construction to limit future unanticipated costs.
- ii. Replacement of old systems [e.g., water heaters, or heating, ventilation and air conditioning (HVAC) systems, etc.].
- iii. Building code compliance, and other state and local government requirements for code compliance, including, but not limited to repainting, patching, and repairing of items.

³ Allocation of any funds for CPP is conditioned on appropriation of the annual State budget.

- iv. Environmental mitigation expenses; the cost of removing, disposing and replacing hazardous building materials, including, but not limited to, lead based paint and asbestos, and the removal and disposal of hazardous substances, including, but not limited to, expenses and fees related to testing, oversight, such as environmental consultants and state and local jurisdiction permits and fees.
- v. Energy efficient upgrades, e.g., the replacement of plumbing, lighting, HVAC systems with more energy efficient models, the installation of drought tolerant landscaping, solar power systems, patio covers, awnings, etc.
- vi. State and local jurisdiction permits and fees, including, but not limited to, building and planning fees, traffic and school impact fees, plan review fees, hook-up fees for water lines, sewer connections, etc.
- vii. State licensing fees.
- viii. Upon approval by the Department, the use of up to ten thousand dollars (\$10,000) of CPP funds to pay for costs associated with pool removal.
- ix. Legal, accounting, consultant, project management, and developer fees.
- x. Housing development holding costs, not to exceed a period of six (6) months without prior written approval from the Department. Extensions will be time-limited and only be considered in rare and extraordinary circumstances. The expenses may include monthly debt service payment, utility expenses, yard maintenance, and property insurance policy costs required by the Department, including hazard, general liability, and recommended deductibles for all policies.
- xi. Fire sprinkler installation and maintenance at each property.

VIII. Ineligible Costs

A. Ineligible property costs include, but are not limited to, the following:

- i. The acquisition or development of real property that would ultimately be owned by the RC, a consumer or their family members, a provider of services, or any entity other than the Department-approved NPO.
- ii. Purchase of real property for which another funding source is available, or if CPP funds are proposed to be used to supplant existing funding. CPP funds may supplement or enhance funding combinations (leverages), but cannot be used in lieu of other available sources.
- iii. Ancillary costs that are associated with other activities than the production of, or improvements to, the CPP property, as determined by the Department at

its sole discretion. For example, the Department will not pay for structure or barn removals, unless the RC demonstrates to the Department's satisfaction that such removals are beneficial.

- iv. NPO holding costs that exceed a period of six (6) months without the Department's approval.
- v. Commissions related to real estate transactions.

IX. DDS Review of the Housing Proposal

A. Development and Ownership Capacity

The Department will make an initial determination of the merits of each Housing Proposal and the ownership capacity of the proposed NPO based on the following criteria:

- i. The RC has satisfactorily transitioned consumers in prior CPP-funded housing projects.
- ii. The RC has demonstrated the need in their community for the added capacity for consumers living in a developmental center, an IMD facility ineligible for FFP, an out-of-state placement, and/or for consumers at risk of admission to FDC or SDC due to an acute crisis, an IMD facility ineligible for FFP, or an out-of-state service.
- iii. The RC has demonstrated satisfactory progress, including timely submission of quarterly reports and all required documents identified in Appendix H, for all previously approved CPP-funded housing projects. As a general Department guideline, the time period from close of escrow to the completion of renovation (certificate of occupancy) should not exceed six (6) months for a single-family project.
- iv. The Housing Proposal includes sufficient organizational and financial documentation, specified in Appendix J and Section V. of these Housing Guidelines that provides evidence of the NPO's organizational capacity to own and operate the property before, during, and after the project is completed based on history of resource development, experience, background, and financial/staffing resources.

B. Housing Proposal Review

The Department will conduct a detailed review of each Housing Proposal using the following criteria and/or procedural guidelines:

- i. The feasibility and reasonableness of the proposed project.
- ii. The proposed housing is consistent with the unique and specialized service

and support needs of consumers transitioning from a developmental center, IMD facility ineligible for FFP, or an out-of-state service.

- iii. The proper submission of all components of the proposal and project requirements.

The Department may determine the accuracy and completeness of the submitted proposal and documents. The Department may contact any entity named in the proposal, including funding sources, contractors, clients, and other agencies for the purpose of verifying the information provided in the proposal.

X. Housing Approval Process

A. Housing Proposal

- i. If the Housing Proposal meets the requirements contained in these Housing Guidelines, the Department will issue a written letter of conditional approval to the RC that authorizes the RC to implement the proposal, including proceeding with the search for the CPP property(ies). The Department will use the same CPP project identification number(s) as indicated in the RC's Department-approved CPP for communication and tracking purposes.
- ii. If the Housing Proposal does not meet the requirements contained in these Housing Guidelines, the Department will work with the RC to modify its submitted Housing Proposal to come into compliance. Once the Housing Proposal meets the requirements, the Department will issue a written letter of conditional approval.

B. Housing Acquisition Request

The RC shall submit a written HAR for each property to the Department, no later than five (5) business days after receipt of evidence of an accepted final offer by the seller and NPO. With written approval from the Department, the HAR may be submitted after the five (5) days after signing the purchase agreement (acceptance of the final offer by seller and NPO), but no later than seven (7) business days prior to the end of the "contingency period," as outlined in the property purchase agreement, that could risk the NPO's earnest money deposit.

The RC is required to obtain the Department's final written approval for the acquisition of each property prior to close of escrow. The Department's written approval also provides authorization for the RC to electronically transfer CPP funds into escrow, as described in the escrow instructions. The HAR shall contain the following:

- i. A copy of the executed purchase agreement, including any counter offers and/or addendums. This must be a complete package showing an accepted offer.

- ii. A preliminary title report.
- iii. An appraisal conducted by a licensed State appraiser. An appraisal completed for the lender(s) is acceptable to meet this requirement.
- iv. An updated estimated development Sources and Uses of funds.
- v. An updated estimated itemized operating budget.
- vi. An estimated fifteen (15) year pro forma. (If the proposed term of the loan is different than 15 years, the pro forma must be consistent with this length of time).
- vii. A replacement reserve analysis that supports the requested replacement reserve amount. (See also Section IV.M.iv. of these Housing Guidelines.)
- viii. A senior lender loan commitment letter(s) on company letterhead specifying the loan amount, interest rate, amortization terms, loan fee, etc.
- ix. A brief summary of the property/project including the development type (e.g., ARFPSHN, Specialized Residential Facility, etc.).
- x. A certification by the RC that the home qualifies for licensure (i.e., does not present an overconcentration issue pursuant to Health and Safety Code Sections 1267.9 and 1520.5, etc.).

The request shall be sent to:

Nancy Record
Department of Developmental Services
1600 Ninth Street, Room 320 (MS 3-9)
Sacramento, CA 95814
nancy.record@dds.ca.gov

Upon receipt of all documents specified above, the Department shall review the RC's submitted HAR for completeness and accuracy. The Department will provide final approval or disapproval to the RC's request for the acquisition of a proposed CPP property within five (5) business days of the Department's verified receipt of a complete and accurate HAR. Note: The Department's decision may be delayed past five (5) business days if the Department requires follow-up documentation or information regarding a submitted HAR.

i. Modification Request

If the RC intends to request a modification to the Housing Proposal or to an approved or existing project, including requests to change acquisition and/or renovation funds, the RC must submit the Department's Modification Request Form, along with any documents necessary to support and implement the new proposal, amended current Housing Proposal, or proposed changes to an

approved housing project. The Department will review the request using review standards described in these Housing Guidelines. The RC must not make any significant changes to projects without prior written approval from the Department. Following the written approval of a request, the RC must continue to maintain satisfactory performance as described above.

A significant change includes, but is not limited to, a proposed change in the following:

- i. The NPO.
- ii. Additional funds needed to complete a project. These may be for unanticipated renovation or construction costs, including, but not limited to person-centered modifications, environmental hazards, local planning requirements, etc.
- iii. A release of unused funds of five thousand dollars (\$5,000), or greater.
- iv. The number of beds/units (capacity).
- v. The address/location of the property, when specified in the proposal or subsequent updates.
- vi. The purpose of the project and use of the funds.
- vii. The replacement reserve amount.

XI. Project Status and Reporting

The purpose of these documents and status reporting requirements is to protect and preserve homes developed with CPP funds for use by consumers.

A. Project Completion Documents

All documents from closing to project reconciliation must be submitted according to Appendix H.

B. Reporting

Once the Housing Proposal is approved by the Department, the RC must provide quarterly and annual progress reports based on the State FY.

i. Quarterly

The RC completes quarterly reports using the CPP Management Tool sent to RCs every FY quarter. Quarterly reporting starts the next full FY quarter following the Department's approval of a Housing Proposal. For example, if the Housing Proposal is approved in September, the initial quarterly report

would track progress through December and would be due in January.

The RC may also submit completed project documents for the CPP property at this time. (See also Appendix H.)

ii. Annually

Quarterly reports convert to annual reports upon all of the following conditions:

- a) The submission of a reconciliation of CPP funds. Within ninety (90) days of completion of the project, the RC shall require the NPO to submit to the RC for verification, a reconciliation statement of final cost and CPP funds expended and claimed. The RC shall provide to the Department a statement of verification of reconciled funds, by project.
- b) The RC has submitted all required documents for the project, e.g., restrictive covenant, executed long-term lease agreement, executed property management agreement, etc.
- c) The RC must submit an annual report to the Department by February 1 of each year. The CPP Housing Annual Report form is included as Appendix M.

C. Performance Measurement

Prior to the review of a Housing Proposal, the Department assesses the RC's performance on previous projects. The purpose of this review is to determine if the RC and NPO demonstrate a history of successfully completing housing projects for the intended residents.

The Housing Proposal must describe measurable performance expectations and results, including:

- i. Progress reports submitted to the Department on project status (1) quarterly during pre-development and development phases, and (2) annually thereafter upon the conditions specified above.
- ii. Evidence that the property will be made available for occupancy by consumers within one (1) year of the Department's approval of a HAR. If housing will not be available for occupancy within one (1) year, provide detailed information outlining the cause for development delays and requesting an extension.

If development is substantially delayed on any project, the Department, in partnership with the RC, will review the cause(s) of the delay. If necessary, the Department may require the RC to submit, for the Department's review and approval, a revised targeted development plan to resolve any issues impeding

the ability of the project to meet and maintain satisfactory progress. The plan may include, but not be limited to, the following actions:

- i. Increased development monitoring requirements for the project.
- ii. Increased fiscal review and financial reporting requirements.
- ii. The Department may monitor services and supports provided by the RC, including fiscal reports, with or without prior notice, pursuant to WIC Section 4648.1.

The plan will remain in effect until the non-performing project achieves satisfactory progress as jointly determined by the Department and the RC. If the delayed project does not achieve satisfactory progress, the Department may take some or all of the following actions:

- i. The reversion of some or all of allocated CPP funds held by the RC.
- ii. Disapprove, or temporarily stay, the RC's and NPO's development of any housing project(s) in which CPP funds are used.
- iii. Any other action the Department deems appropriate.