

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

for

**Fiscal Year 2017-18 Requests and
Modifications**

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Department of Developmental Services

Community Placement Plan Housing Guidelines Fiscal Year 2017-18

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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, 2017. 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 housing developer organization (HDO) 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 who receive services and supports 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 HDO (either a non-profit or a for-profit entity) 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 (EBSH) and Community Crisis Homes (CCH) as models of care for consumers requiring intensive services and supports due to challenging behaviors. EBSHs are statutorily required as a pilot program and implemented, until January 1, 2020, to test the effectiveness of these homes.

¹For purposes of the 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) 2017-18 CPP Guidelines (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 HDO, or to begin renovation or construction activities on a property that is already owned by the HDO.

When the purchase of a property by the HDO is documented by a fully executed purchase agreement and approved by the RC, the RC shall submit a Housing Acquisition Request (HAR) to the Department in accordance with Section X.B of the 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 and Housing Acquisition Request (HAR)

The Housing Proposal and HAR 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 2017-18 CPP Guidelines and the Housing Guidelines.
- Demonstrate a contractual agreement between the RC and HDO that requires the RC and HDO 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 the Housing Guidelines regarding the submission of a Housing Proposal prior to the selection of an HDO.)
- Demonstrate a separation of property ownership from the delivery of services and supports within the home, i.e., the HDO 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 HDO to comply with the terms of the Housing Guidelines, including but not limited to its execution of the Department’s restrictive covenant (Appendix A) for each property it acquires.
- 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 residential facility rate structures.
- Specify that the services and supports in CPP housing settings must be eligible for Federal Financial Participation (FFP) consistent with WIC section 4418.25(b)(5) and is in compliance with the home and community-based settings requirements in federal regulation (42 Code of Federal Regulations sections 441.301(c)(4) and 441.710), unless otherwise approved by the Department.
- 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 B of the CPP Guidelines.)

The approval of a Housing Proposal and HAR 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 the 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 HDO 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 the 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 Department approves a RC’s proposed multi-family project consistent with the process specified in the CPP Guidelines, the RC must contact the Department 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 90 days from the date of approval of its CPP.

Appendix N of the 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 must be executed for each CPP property developed as part of a Housing Proposal submitted under the Housing Guidelines:

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

The RC may complete such applicable contracts 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, HDO, 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 contract must include the following:

- A. **PROJECT DEVELOPMENT:** The RC-HDO 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 contract should demonstrate to the satisfaction of the Department how the HDO 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 CONTRACTS:** The provisions in the RC-HDO contract must be consistent with the provisions in the 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-HDO contracts, the Housing Guidelines shall control.
- C. **ESCROW INSTRUCTIONS:** Following approval, the RC must use the Department-approved escrow instructions (Appendix L) 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.

- D. LEASE RATE ADJUSTMENT: The RC-HDO contract and the HDO-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.

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

- E. REPLACEMENT RESERVE ACCOUNT: The HDO-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, heating, ventilation, and air conditioning (HVAC) systems, etc. (See also Section IV.O.iv of the Housing Guidelines for more details on the replacement reserve account.)
- F. MAINTENANCE: The HDO-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 HDO for short- and long-term maintenance.
- G. DISPOSAL POLICY: The RC-HDO contract shall include a requirement that the HDO develops a written policy on the disposal of any existing fixtures and major appliances that are included in a property's purchase.
- H. WELFARE PROPERTY TAX EXEMPTION: When the HDO and service provider are 501(c)(3) non-profit organizations, the RC-HDO contract obligates the HDO to file a property tax exemption application as early as possible after the HDO purchases the property and has signed an HDO-service provider lease. In any event, this process should occur no later than the first day the first consumer occupies the property. Note: The HDO 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 HDO directly pays the property tax, and the property tax cost is incorporated into the lease payment, the HDO-service provider lease 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 service provider directly pays the property tax (additive to the base rent rate), the HDO-service provider lease must spell out such an agreement.
 - iii. In the instances when rent is reduced under either (i) or (ii) 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.
- I. CPP FUND RECOUPMENT: The RC-HDO 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 the 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 and the requirement to repay CPP funds.
- J. UNUSED CPP FUNDS: The RC-HDO 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 or HDO, 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.
- K. DISCONTINUED PROJECT: The RC-HDO contract requires the HDO 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, where appropriate, an alternative project focus or use of CPP funds.
- L. PROJECT COSTS: The RC-HDO contract specifies the projected cost to acquire and/or renovate the property, or projected new construction costs.
- M. DEVELOPER FEE: The RC-NPO contract describes the proposed developer fee(s) from all sources and the basis for calculating the fee(s).

- N. **PERFORMANCE ASSURANCES:** The RC-HDO contract describes how the RC and HDO provide for the obligation of the HDO 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 HDO 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. The RC-HDO 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-HDO contract that the HDO 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 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 HDO 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.

O. **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 XI. of the Housing Guidelines, and shall report the progress of the projects on a monthly basis.

- iii. Insurance: The RC shall ensure that the HDO 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 RC and 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 HDO maintains a replacement reserve account for all CPP properties and provides an summary 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 HDO may deposit replacement reserve funds for multiple properties in one bank account. Prior to using funds in the replacement reserve account, the HDO must obtain the RC's approval. The RC must ensure the HDO has exhausted all other sources of funding, e.g., insurance, product warranties, etc., before using replacement reserve funds.

The HDO shall maintain and make available the replacement reserve account detail; to include the account balance, expenditures, receipts, and purpose for using the replacement reserve funds.

The RC shall ensure the HDO conducts a replacement reserve projection at the time a HAR is submitted. A replacement reserve analysis shall be completed and submitted to the Department and RC upon completion of the home renovation and no less than every five (5) years thereafter. An independent third party shall complete the replacement reserve projection or replacement reserve analysis, unless the Department grants prior approval.

The RC must provide a summary of the replacement reserve account as part of the annual report submitted to the Department. (See also Section XI.B.ii of the Housing Guidelines and Appendix M.)

V. CPP Housing Proposal Contents

A. Housing Proposal Overview

The Housing Proposal shall:

- i. Identify 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, SRF, ARFPSHN, EBSH, CCH, Family Teaching Home, or units within a multi-family housing development.
- ii. Identify the applicable HDO that will acquire ownership of the property.
 - a) In instances where the developer is different from the HDO, specify a time certain that the HDO 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 HDO at the time the Housing Proposal is submitted to the Department, the RC may describe the process that will be used to select an HDO, or the pending Request for Proposal process. Once the RC has selected the HDO, the RC must submit all required HDO documents to the Department for review and approval, prior to the HDO entering into any purchase contract for real property.

Note: If the RC selects a for-profit entity as the HDO, the RC must contact the Department about the required documents.

B. Financial

The Housing Proposal shall include the following financial information:

- i. Unless waived by the Department, show 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.
- ii. 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 HDO (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 leveraged 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, conflict-free private parties, banks, and foundations.
- iii. 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.
- iv. An estimated itemized operating budget in a format approved by the Department.
- a) For the established operating reserve account, approved and consented to by the Department and RC, the following conditions apply:
 - The HDO shall only use the established operating reserve account to defray unanticipated monthly operating expense budget shortfalls (e.g., repair and maintenance, etc.). The HDO shall submit to the RC and the Department, for approval, a written policy and procedure on how, when and why the HDO may use the operating reserve account.

- The HDO shall maintain and make available the operating reserve account detail; to include the account balance, expenditures, receipts, and purpose for using the operating reserve funds. The HDO shall provide the RC with an annual summary of the operating reserve account.
 - The RC shall provide a summary of the operating reserve account as part of the annual report submitted to the Department. (See also Section XI.B.ii of the Housing Guidelines and Appendix M.)
- v. A projected pro forma budget that demonstrates the project's financial feasibility. The budget:
- a) Accounts for required replacement and any operating reserve deposits, if applicable.
 - b) 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. HDO Documents

The RC shall submit with the Housing Proposal, the required HDO documents for a non-profit entity consistent with Appendix I. If the RC has not yet selected an HDO, the RC must submit the HDO documents to the Department for review and approval, prior to the HDO entering into any purchase contract for real property. 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 HDO documents one-time annually with the first Housing Proposal of the funding year. If any of this information changes, the RC must provide the Department with the updated document(s), as applicable.

Note: If the RC selects a for-profit entity as the HDO, the RC must contact the Department to obtain a list of the required HDO documents.

D. RC-HDO Contract

The RC shall provide the final contract between the RC and HDO related to the property.

E. Disposal Policy

The RC shall provide the HDO's written policy on the disposal of any existing fixtures and major appliances that are included in a property's purchase.

VI. **CPP Property Documents**

After the Department has issued the approval of the HAR, the RC and HDO shall use the following CPP Property documents at the closing of the acquisition of the CPP property: (i) DDS 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 C) or Profit Participation Agreement (Appendix B); (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.

Note: If the RC selects a for-profit entity as the HDO, the RC must contact the Department to obtain the applicable 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 HDO consistent with the requirements outlined in the Housing Guidelines.

A. Restrictive Covenant

An approved property shall have a recorded restrictive covenant (Restrictive Covenant) entered into between the RC and HDO (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 Restrictive Covenant is to restrict the use of the property as housing for consumers in perpetuity. Accordingly, the 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 HDO becomes the fee owner of the property.

The enclosed Restrictive Covenant template (Appendix A), as approved by the Department, shall 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 the 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 HDO within five (5) days upon any default by the HDO 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 HDO 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 Restrictive Covenant, the Department may give written notice to the HDO. If the breach or violation is not cured to the satisfaction of the Department within the time 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 the Housing Guidelines, (i) an HDO is the fee owner of a property purchased in part with CPP funds, and (ii) the HDO's property is not yet encumbered by a recorded DDS Restrictive Covenant, then the RC shall cause the HDO to execute and record a DDS Restrictive Covenant consistent with the restrictive covenant requirements set forth in the Housing Guidelines before the Department will fund any new Housing Proposal from such RC.

B. DDS CPP Deed of Trust

An approved property shall have a deed of trust in favor of the Department (DDS Deed of Trust) signed by the HDO (as owner of the property) and recorded concurrently with the Restrictive Covenant on the day the HDO 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 HDO 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 (non-profit HDO only) or DDS Community Placement Plan Promissory Note Secured by Deed of Trust

As applicable, the HDO 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:** A non-profit HDO 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 non-profit HDO 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 HDO shall execute the DDS Community Placement Plan Promissory Note Secured by Deed of Trust (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 HDO becomes the fee owner of the property (close of escrow). In consideration of the receipt of CPP funds, the HDO 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 Restrictive Covenant may only be terminated consistent with the terms of the Restrictive Covenant or as may be acceptable to the Department at its sole discretion. The Department's Promissory Note is included as Appendix C.

Should the RC and HDO elect to submit alternative language for the documents in Appendix A, Appendix B, or Appendix D, specified above, the RC and HDO 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 HDO 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 HDO obtains an executed Agreement to Provide Notice and Cure Rights from the senior lender no later than the close of escrow (in a form substantially similar to Appendix G). The RC shall provide the form to the HDO 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 HDO becomes the fee owner of the property (as part of escrow) and recorded concurrently with the CPP Property Documents.

E. Order of Recordation

The Department's documents only may 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 CPP Property Documents.

F. Title Insurance

The RC must ensure the HDO procures lender's title insurance for the Department. The amount of such insurance shall be equal to the DDS note or PPA amount. The RC also must ensure that the HDO procures owner's title insurance. The cost of both policies of title insurance is an allowable acquisition cost as referenced in VII.A. of the 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 the Housing Guidelines.)

VII. Eligible Acquisition, Renovation, and New Construction Costs

CPP funds shall be used only for acquisition, renovation, and new construction of real property as described below. CPP funds cannot be encumbered, expended, or otherwise legally obligated to an HDO until the RC receives the Department's approval of its Housing Proposal. Note: Allocation of any funds for CPP is conditioned on appropriation of the annual State budget.

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 HDO Owned Property/New Construction Costs

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 or new construction 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 RC, along with others in the development team, should comprehensively evaluate the consumers' identified needs prior to the start of renovation or construction to limit future unanticipated costs.
- ii. Replacement of old systems or installation of new systems (e.g., water heaters, HVAC systems, generators, etc.) when necessary to meet the consumers' needs or when supported by inspection reports.

- iii. Building code compliance, and other state and local government requirements for code compliance, including, but not limited to retrofitting, energy/water efficiency, and natural hazard mitigation.
- 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 or installation of plumbing, lighting, HVAC systems with more energy efficient models, the planting 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. 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. The costs 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.

Note: The Department will consider time-limited extensions under extraordinary circumstances. The HDO must submit a written request to the RC with a copy to the Department that describes the reason for the request and the circumstances leading to the request. The Department will work with the RC to review the request.

- 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 HDO.
- 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 (leveraged funding), 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. 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 HDO 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, a facility ineligible for FFP, an out-of-state placement, and/or for consumers at risk of admission to Fairview Developmental Center or Sonoma Developmental Center due to an acute crisis, a 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 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 the Housing Guidelines that provides evidence of the HDO's 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, a 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 to verify 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 the 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 HDO. With written approval from the Department, the RC may submit the HAR after the five (5) days following the execution of the purchase agreement (acceptance of the final offer by seller and HDO), 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 HDO’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 fully 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 (with hyperlinked documents).
- iii. An appraisal report conducted by an independent appraiser licensed by the State. 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.

Note: If the purchase price of the property is more than its appraised value and the RC and HDO wish to continue with the purchase, the Department must approve the purchase and the HDO must use other sources of funding (i.e., not CPP funding) for the amount in excess of the appraised value.

- iv. Any relevant inspection reports and disclosure documents for the property, i.e., home, pest/termite, Natural Hazards Disclosure Report, well, septic, roof, etc.
- v. An updated estimated development Sources and Uses of funds.
- vi. An estimated itemized renovation hard cost budget.
- vii. A replacement reserve projection that supports the requested replacement reserve amount. (See also Section IV.O.iv. of the Housing Guidelines.)
- viii. An updated estimated itemized operating budget.
- ix. A projected pro forma budget.
- x. A senior lender loan commitment letter(s) on company letterhead specifying the loan amount, interest rate, amortization terms, loan fee, etc.

- xi. A brief summary of the property/project including the development type (e.g., ARFPSHN, SRF, EBSH, CCH, etc.) and the provision for automatic fire sprinkler systems.
- xii. 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 RC shall send the HAR to:

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

and

**Yvonne McCuistion Tucker, Chief
yvonne.mccuistion@dds.ca.gov**

and

CPPinformation@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.

C. 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 (See Enclosure G of the CPP Guidelines), 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 the 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 HDO.
- ii. Additional funds needed to complete a housing 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.
- vi. 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 monthly and annual progress reports.

- i. Monthly
 - a) The RC completes monthly reports based on the Department's CPP Management Tool following approval of a Housing Proposal.
 - b) The RC may also submit completed project documents for the CPP property at this time. (See also Appendix H.)
- ii. Annually

Monthly 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 HDO 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 property, 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 HDO 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) monthly during pre-development and development phases, and (2) annually thereafter upon the conditions specified above.
- ii. Evidence that the housing project will be available for occupancy by consumers within one (1) year of the Department's approval of a HAR. If the property 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.

- iii. 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 HDO's development of any housing project(s) in which CPP funds are used.
- iii. Any other action the Department deems appropriate.