

**INITIAL STATEMENT OF REASONS**  
**California Code of Regulations**  
**Title 9. Rehabilitative and Developmental Services**  
**Division 1. Department of Mental Health**  
**Chapter 14. Mental Health Services Act**

California voters approved Proposition 63 during the general election held November 2004. Proposition 63 took effect on January 1, 2005 as the Mental Health Services Act (MHSA). The MHSA imposes a 1 percent tax on personal income in excess of \$1 million in order to increase funding to expand mental health services to children/youth, adults and older adults who have severe mental illnesses/serious emotional disturbances and whose service needs are not being met through other funding sources. Further, the MHSA seeks to establish prevention and early intervention programs, as well as develop innovative programs. The MHSA provides the opportunity for the Department of Mental Health (DMH) to increase funding for personnel and other resources to support county mental health programs and monitor progress toward statewide goals for children/youth, adults, older adults and families.

The MHSA, at Welfare and Institutions Code (WIC) Section 5847, directs the county mental health programs to develop and submit a three-year plan, which the Department has called the Three-Year Program and Expenditure Plan (Plan). WIC Section 5848, subdivision (c), requires DMH to establish requirements for the content of the Plan. The Plan is comprised of five components of activities and/or services for which the funding established under the Act can be spent. The components are: Community Services and Supports (referred to in the MHSA as services to adults, older adults, children and

transition age youth); Capital Facilities and Technological Needs; Workforce Education and Training; Prevention and Early Intervention; and Innovative Programs.

Given the scale of each component, DMH is implementing each component on a sequential and/or staggered basis. The first component of the Plan to be implemented was Community Services and Supports (CSS). As DMH implements each component, it is promulgating regulations accordingly, with the ultimate goal of integrating each component into the Plan. To accomplish this goal, the Department has adopted Chapter 14, "Mental Health Services Act," in Division 1 of Title 9 of the California Code of Regulations (CCR).

This Statement of Reasons accompanies the draft regulations for the Capital Facilities segment contained in the California Code of Regulations Title 9, Division 1, Chapter 14, Article 7, Capital Facilities and Technological Needs, which expands on the MHSA regulations currently in effect. Unlike the other components, (Community Services and Supports, Workforce Education and Training, Prevention and Early Intervention and Innovative Programs) the Capital Facilities and Technological Needs component is divided into two distinct segments: the Capital Facilities segment and the Technological Needs segment. This division is necessary as the two elements of the Capital Facilities and Technological Needs component are so distinct that separate regulations are being promulgated for each element. This regulation package includes section 3710 which are the regulations that are applicable to the Capital Facilities and Technological Needs component. These regulations are included as the information contained in section

3710 is relevant to the Capital Facilities segment (also contained in this package as sections 3712 through 3760). The Technological Needs segment regulations will be submitted as a separate/distinct regulation package. Adoption of these regulations is necessary to implement the provisions required by the MHSA. Pursuant to the Administrative Procedures Act, DMH has prepared this Statement of Reasons which presents the purpose and the rationale for necessity for each regulation.

**NOTE:** The acronym MHSA will be used for Mental Health Services Act once the term is introduced in section 3200.025, Capital Facilities.

## **Article 2: DEFINITIONS**

### **(1) Section 3200.025. Capital Facilities.**

**Specific Purpose:** Section 3200.025 designates and defines “Capital Facilities” as a segment of the Capital Facilities and Technological Needs component, under which the County constructs or renovates a building and/or develops land for the purpose of acquiring/constructing a building in which administrative activities, services and/or supports specific to the Mental Health Services Act (MHSA) are provided.

**Rationale for Necessity:** This regulation is necessary to ensure the County understands that there are two distinct segments within the Capital Facilities and Technological Needs component, Capital Facilities segment and Technological Needs segment. Each segment has its own distinctive purpose and requirements. This definition provides the County clarity as to what constitutes the Capital Facilities segment of the Capital Facilities and Technological Needs component.

**(2) Section 3200.026. Capital Facilities and Technological Needs.**

**Specific Purpose:** Section 3200.026 defines the phrase “Capital Facilities and Technological Needs” to mean the component of the Three-Year Program and Expenditure Plan that addresses the infrastructure and/or technology needed to support the County’s mental health system.

**Rationale for Necessity:** This definition is necessary to identify Capital Facilities and Technological Needs as one of the five components of the Three-Year Program and Expenditure Plan, pursuant to Welfare and Institutions Code section 5892, subdivision (b). In addition, this definition is necessary to make clear that funding for the Capital Facilities and Technological Needs component is to be used to support the County’s mental health system and not for other general improvement purposes.

**NOTE:** The Capital Facilities and Technological Needs component is being processed as two separate regulation packages, one for the Technological Needs segment, and one for the Capital Facilities segment.

**(3) Section 3200.257. Restrictive Setting.**

**Specific Purpose:** Section 3200.257 defines a restrictive setting as a building that utilizes a secured perimeter, locked exit doors and/or other mechanical/electrical means to prevent individuals from exiting at will.

**Rationale for Necessity:** This definition is necessary as the Welfare and Institutions Code section 5847(a) sets forth the various activities that the County may include in its Three-Year Program and Expenditure Plan. Specifically, subdivision (b)(5) states "...All plans for proposed facilities with restrictive settings shall demonstrate that the needs of the people to be served cannot be met in a less restrictive or more integrated setting". As this language allows the County to use MHSA monies for restrictive settings, it is necessary to provide a definition of what constitutes a "Restrictive Setting" for standardization and consistency of the term in all 58 counties of California.

## Article 3: GENERAL REQUIREMENTS

### **(4) Section 3310. The Three-Year Program and Expenditure Plan.**

#### **Section 3310, subdivision (a)**

**Specific Purpose:** Section 3310, subdivision (a) amends the requirement as to what the County must provide/comply with, in order to receive Mental Health Services Act (MHSA) funds. A program/project work plan(s) must be submitted in order to obtain MHSA funds.

**Rationale for Necessity:** The amendment is necessary to provide the County with a complete list of the documents to be submitted in order to request MHSA funds.

Current regulations (section 3650, Community Services and Supports Component of the Three-Year Program and Expenditure Plan, subdivision (a)(6)) reference the completion of a work plan. Each component to the MHSA regulations will include a section that specifies the requirements for the component-specific work plan. Additionally, section 3310, The Three-Year Program and Expenditure Plan did not require the submission of a work plan as part of the Three-Year Program and Expenditure Plan or update in order to receive MHSA funds. This additional language will ensure that the County understands what needs to be submitted as part of the Plan and approved before the County is eligible to receive funds.

**Section 3310, subdivisions (g), (g)(1), (g)(2) and (g)(3)**

**Specific Purpose:** These regulations establish a single location within the regulations that lists the specifics to which the County Mental Health Director certifies the County's compliance.

**Rationale for Necessity:** These regulations are necessary as the County Mental Health Director is required to certify the Three-Year Program and Expenditure Plan or update as he/she is the individual the Department will hold responsible for the validity of the information included in the Plan or update in terms of compliance with all applicable laws and regulations.

Subdivision (1) Compliance with pertinent laws and regulations, including section 3410, Non-Supplant.

This regulation is necessary to enable the Department to monitor the County's compliance with section 3410, Non-Supplant. It is important to ensure that the MHSA funds provided to the counties are used to expand mental health services, not to replace other state or county funds required to be used to provide mental health services. This subdivision also incorporates language from the current section 3500, Non-Supplant Certification and Reports, subdivision (a). (Subdivision (a) is being deleted from the current section 3500 which is being renamed "Bridge Funding"

Subdivision (2) Development of Three-Year Program and Expenditure Plan or update with stakeholder participation.

The certification must state that these services have been identified as a priority in the Community Program Planning Process. This again is in keeping with the spirit of the MHSA to provide a structure and process that counties use, in partnership with their stakeholders, in determining how best to utilize the MHSA funds to meet unmet mental health needs within each individual county.

Subdivision (3) All information provided is true and correct.

The certification must attest to the accuracy of the information provided. The County Mental Health Director is, therefore, the person held accountable by the Department for all information provided as part of the Three-Year Plan or update on behalf of the County.

## Article 4: GENERAL FUNDING PROVISIONS

### **(5) Section 3400. Allowable Costs and Expenditures.**

#### **Section 3400, subdivision (e)**

**Specific Purpose:** This regulation moves the requirement for the County to maintain documentation of expenditures from section 3500, Non-Supplant Certification and Reports, subdivision (b).

**Rationale for Necessity:** This amendment is necessary as all of the regulations in Section 3500 are being moved to sections that are more appropriate to the requirements contained in the regulation. The title of section 3500, Recordkeeping, is being changed to Bridge Funding and will house only the requirement specific to bridge funding. (See Rationale for Necessity for section 3500.)

## Article 5: REPORTING REQUIREMENTS

### **(6) Section 3500. Bridge Funding.**

**Specific Purpose:** The title of section 3500 is being changed to more accurately reflect the contents of this section.

**Rationale for Necessity:** This amendment is necessary as subdivisions within this section have been deleted and/or moved. For example, subdivision (a) regarding compliance with the Non-Supplant prohibition is now contained in section 3310, proposed subdivision (g)(1), subdivision (b) is being moved to section 3400, subdivision (e) and subdivision (c) is being rewritten and incorporated into section 3505, Cost Report. As this section will now only contain the documentation required for bridge funding, the current title, Non-Supplant Certification and Reports is erroneous.

### **Delete Section 3500, subdivision (a)**

**Specific Purpose:** Section 3500, subdivision (a) is being moved and the requirement regarding compliance with section 3410, Non-Supplant, incorporated into section 3310, The Three-Year Program and Expenditure Plan, subdivision (g)(1). (See Rationale for Necessity for section 3310, subdivision (g)(1)).

**Rationale for Necessity:** This amendment clarifies and eliminates the non-supplantation certification. The non-supplantation certification for the Three-Year Program and Expenditure Plan is now incorporated into the regulation that provides for

all the certification for the Three-Year Program and Expenditure Plan (section 3310 subdivision (g)). To eliminate duplication, this was removed from this section.

**Delete Section 3500, subdivision (b)**

**Specific Purpose:** Section 3500, subdivision (b), the requirement to maintain documentation of funding expenditures is being moved to section 3400, Allowable Costs and Expenditures and renumbered to subdivision (e).

**Rationale for Necessity:** The deletion of this subdivision is necessary as the title/contents of section 3500 is being amended to “Bridge Funding”. Therefore, subdivisions (a) through (c) are being relocated to more appropriate sections.

**Delete Section 3500, subdivision (c)**

**Specific Purpose:** Section 3500, subdivision (c), the requirements regarding the Cost Report, are being moved to section 3505, Cost Report.

**Rationale for Necessity:** The deletion of this subdivision is necessary as the title/contents of section 3500 is being amended to “Bridge Funding”. Therefore, subdivision (c) is being relocated to section 3505, Cost Report which is more appropriate.

**Renumber Section 3500, subdivision (d)**

**Specific Purpose:** Section 3500, subdivision (d) is being renumbered to subdivision (a) with the relocation of subdivisions (a) and (c).

**Rationale for Necessity:** This amendment is for formatting purposes only.

**(7) Section 3505. Cost Report.**

**Section 3505, subdivisions (b), (b)(1), (b)(2) and (b)(3)**

**Specific Purpose:** These regulations reformat the existing subdivision (b) into subdivision (b), (b)(1) and (b)(2) and add an additional requirement for certification by the Director and Auditor-Controller.

**Rationale for Necessity:** These regulations are necessary as section 3500, is being renamed “Bridge Funding” and will only contain the former subdivision (d) that addresses bridge funding. The other regulations contained in section 3500 have been moved to other sections. Section 3500, subdivision (c)(2) is now contained in section 3505, Cost Report as subdivision (b)(3).

## **Article 7: CAPITAL FACILITIES AND TECHNOLOGICAL NEEDS**

### **(8) Section 3700. Rules of General Application.**

**Specific Purpose:** Section 3700 informs the County that in addition to the regulations contained in this article, Article 7, the County shall also comply with the regulations contained in Articles 1 through 5.

**Rationale for Necessity:** This regulation is necessary to notify the County that in addition to Article 7, that contains the specific regulations that must be met for the Capital Facilities and Technological Needs component, regulations contained in other Articles of Chapter 14 must be met. The MHSA contains multiple components that will be addressed by regulations. The Department has, however, identified specific requirements that must be met by the County regardless of the component being implemented. These specific requirements, contained in Articles 1 through 5, are "general" requirements to which the County must abide. This regulation serves as a directive to the County of the need to ensure compliance with these general requirements in addition to the component specific requirements.

**(9) Section 3710. Capital Facilities and Technological Needs Component of the Three-Year Program and Expenditure Plan.**

**Section 3710, subdivisions (a), (a)(1) and (a)(2)**

**Specific Purpose:** Section 3710, subdivisions (a), (a)(1) and (a)(2) inform the County that the Capital Facilities and Technological Needs component of the Three-Year Program and Expenditure Plan may contain a Capital Facilities and/or a Technological Needs segment.

**Rationale for Necessity:** These regulations are necessary to ensure that the County is informed that the Capital Facilities and Technological Needs component has separately described segments that are unique and distinct from one another. The Capital Facilities segment is to provide the funds to purchase land and/or to construct or renovate buildings in which mental health programs and services and/or supports are provided. The Technological Needs segment represents the technological needs necessary to meet the County's technology goals of modernization/transformation or client/family empowerment.

**Section 3710, subdivisions (b), (b)(1), (b)(2), (b)(2)(A), (b)(3) and (b)(4)**

**Specific Purpose:** Section 3710, subdivisions (b), (b)(1) through (b)(4) inform the County of the information (subdivisions (b)(1) through (b)(4)) that the Capital Facilities and Technological Needs component of the Three-Year Program and Expenditure Plan shall include.

**Rationale for Necessity:** These regulations are necessary to inform the County of the information to be made available to the Department when submitting the Capital Facilities and/or Technological Needs component for approval.

Subdivision (b)(1) requires the County to specify what the funds will be used for and how the County will use the funds to support MHSA administrative activities, services and/or supports. This is the basis for the Department's approval and release of funds related to the specific proposed projects under the Capital Facilities and Technological Needs component. This regulation outlines the specific information to be included in the conceptual framework narrative that describes how the County will use the funds and how those uses will further the goals of the MHSA and support the programs and services implemented through the MHSA.

Subdivision (b)(2) is necessary as this component of the MHSA includes two very distinct parts. It is therefore necessary for the County to specify how the funds will be distributed. This regulation informs the County of the ability to address either or both of the segments, Capital Facilities and/or Technological Needs. Additionally, the County is allowed to decide how to distribute the funds between the two segments.

Subdivision (b)(2)(A) is necessary to ensure that if the initial distribution of funds (provided by the County as required in Section 3710, subdivision (b)(2)) is amended, that the stakeholders have been involved in the decision to redirect the funds and that the stakeholders support this decision. Each component of the MHSA is required to

meet specific requirements specified in existing regulations. One such requirement is the Community Planning Process to ensure that the stakeholders have the opportunity to provide input to the County on how the MHSA funds shall be spent. Therefore, it is necessary to ensure that if a change to that initial agreement between the County and the stakeholders on how the funds are to be distributed is made, that the stakeholders are not only involved in the decision to redirect funds, but support the decision.

Subdivision (b)(3) supports the requirement contained in section 3300, Community Program Planning Process. It is not enough to require that appropriate stakeholders be involved in the process of establishing the county's priorities in terms of the mental health system. It is also necessary to require the County to provide a description of "how" and to "what extent" the stakeholders were involved in determining County priorities. The description of the establishment of stakeholders' involvement ensures compliance with the intent of the MHSA.

Subdivision (b)(4) requires the County to submit a list of needed capital facilities and technology needs projects. This will enable the Department to determine that the funds requested by the County will be spent on projects that support the programs in the County's Three-Year Program and Expenditure Plan. Because the plan is developed with community stakeholders, the requirement to list community needs, ensures that there is input from members of the community as to the use of the Capital Facilities and Technological Needs funds.

### **Section 3710, subdivision (c)**

**Specific Purpose:** Section 3710, subdivision (c) informs the County of the requirements in order to receive Capital Facilities and Technological Needs funds.

**Rationale for Necessity:** These regulations are necessary to inform the County that it must comply with specific requirements in order to receive MHSA funds for the Capital Facilities and Technological Needs component. First the County must comply with section 3310, subdivision (a) that contains the requirements for a Three-Year Program and Expenditure Plan or update that includes a work plan(s); comply with all other requirements; obtain approvals as specified and enter into a Performance Contract with the Department. (See Rationale for Necessity for section 3310, subdivision (a)). Secondly, the Three-Year Program and Expenditure Plan or update must be approved by the Department and the approved Plan/update must include the Capital Facilities and Technological Needs component. This regulation assists the Department in carrying out its responsibility for overseeing the implementation of the MHSA. (MHSA, Section 3, subdivision (e)). This oversight includes review and approval of the County's plans for the use of funds, in accordance with Welfare and Institutions Code sections 5847 and 5892.

### **Section 3710, subdivision (c)(1)**

**Specific Purpose:** Section 3710, subdivision (c)(1) informs the County that there are two ways to submit a Capital Facilities or Technological Needs work plan.

**Rationale for Necessity:** This regulation is necessary to inform the County of how and when to submit a Capital Facilities and Technological Needs work plan to receive funding under the MHSA. This is consistent with Welfare and Institutions code section 5848, subdivisions (a) and (b), which mandate the public hearing processes. The Department has codified these processes in section 3315, subdivision (b), which requires thirty-day circulation of draft updates but does not require a public hearing. Work plans that are submitted concurrently with the component must comply with section 3315, subdivision (a), while those that are submitted after the County has an approved Plan with a Capital Facility and Technological Needs component need only comply with section 3315, subdivision (b).

**(10) Section 3712. Allowable Capital Facilities Expenditures.**

**Section 3712, subdivisions (a), (a)(1), (a)(1)(A), (a)(2), (a)(3), (a)(4), (a)(5) and (a)(6)**

**Specific Purpose:** Section 3712 introduces and lists the allowable expenditures of Capital Facilities funds.

**Rationale for Necessity:** These regulations are necessary to provide the County with a comprehensive list of the activities that may be paid for with Capital Facilities funds.

(1) Acquire and build upon land that will be County-owned.

It is necessary to allow the County to use Capital Facilities funds to acquire land for the purpose of constructing a building in which MHSA and other mental health programs and supports will be provided. By allowing the County to use Capital Facilities funds to purchase land and then construct the building allows the County greater flexibility in terms of the physical location of the building. However, it may not always be feasible for the County to acquire land with Capital Facilities funds and then fund the construction of the building on the land using Capital Facilities funds. The cost of property throughout California can vary. Therefore, an additional regulation was crafted to allow the County the ability to purchase land without funds requested for the construction of the building thus maximizing the ability of the County in the use of Capital Facilities funds. It is important, however, as the funds are public funds, to ensure that the purchase of land

with MHSA funds will culminate in the construction of a building in which MHSA and other mental health programs and supports will be provided.

In those cases where Capital Facilities funds are used to purchase land and no MHSA monies have been requested for the construction/acquisition of the building, the County is required to follow the requirements in section 3755, Purchase of Land. This reference is necessary to ensure that the County is informed that the purchase of land with Capital Facilities funds is to culminate with the acquisition/construction of a building for the purpose of MHSA and other mental health programs and services. (Also see Rationale for Necessity for Section 3755, Purchase of Land.)

(2) Acquire buildings that will be County-owned, including Lease-to-Own Agreements.

Another appropriate use of Capital Facilities funds is to acquire buildings that will be County-owned, including acquiring buildings through Lease-to-Own Agreements. The amount of money available to the County may not be sufficient to buy a building(s) outright, depending on property value within a specific county. By allowing the County to Lease-to-Own, the County will be able to stretch out the payments to the building owner thereby maximizing the use of the Capital Facilities funds to purchase a building. It is important, however, as the funds are public funds, to ensure that all buildings purchased with Capital Facilities funds, including Lease-to-Own Agreements, will ultimately be owned by the County.

(3) Construct buildings that will be County-owned.

The construction of buildings in which MHSA and other mental health programs and supports are provided is an appropriate use of Capital Facilities funds. It is important to ensure that the County is informed that if public funds (Capital Facilities funds) are being used for the construction of the buildings, the County must either be or become the legal owner of the building(s).

(4) Renovate buildings that are County-owned or privately-owned.

The cost of new construction within California may prevent the County from having sufficient funds to purchase land and construct a building in which MHSA and other mental health programs and services are provided. Allowing the County to use Capital Facilities funds to renovate buildings that can be used to provide MHSA and other mental health programs and services offers a cost-effective alternative to purchasing land/building(s) while allowing the County to expand its mental health services and programs and increase the capacity of these services and programs. The County is referred to section 3730, Renovation, for the additional information to be included on the work plan when building renovation is involved. Refer to section 3730, subdivision (b) for additional requirements when renovation is to a privately-owned building.

(5) Establish and maintain a Capitalized Repair/Replacement Reserve.

The County will need monies to repair and/or replace major structural elements or equipment associated with the buildings purchased/constructed/renovated with Capital Facilities funds. Buildings acquired with Capital Facilities funds are required to be used for mental health services for a minimum of 20 years. During that time, it is possible that major repairs and/or replacements may be required. Establishing a reserve protects the investment of public funds by ensuring that funds are available to make necessary repairs and/or replacements thereby maintaining the asset. The establishment and maintenance of a Reserve for this purpose is an acceptable use of Capital Facilities funds. However, the County is referred to section 3745 which imposes some restrictions on the use of the Reserve.

(6) Pay predevelopment costs.

Predevelopment costs are included as an allowable use of Capital Facilities funds. It is necessary to afford the County the ability to access Capital Facilities funds for predevelopment costs as such costs are consistent with those that any developer would incur when contemplating the purchase of land and/or purchase/renovation/construction of a building and, therefore, should be eligible for reimbursement.

**(11) Section 3714. General Requirements for the Capital Facilities Segment of the Capital Facilities and Technological Needs Component of the Three-Year Program and Expenditure Plan.**

**Section 3714, subdivision (a)**

**Specific Purpose:** Section 3714, subdivision (a) specifies that the use of Capital Facilities funds is for that portion of land and/or the building in which MHSA and other mental health programs, services and/or supports are provided.

**Rationale for Necessity:** This regulation is necessary in order to limit expenditures of MHSA monies specifically to the purchase of land and/or buildings in which MHSA and mental health programs, etc. are provided. One of the purposes of the MHSA is to expand service programs for those with serious mental illness and provide the necessary funds to provide these services. It is, therefore, necessary, to ensure that the County is using public funds for the expressed purposes approved by the voters of California with the passage of Proposition 63, the MHSA. Additionally, while the Department does not want to limit the functions/services provided within a specific building, it is necessary to ensure that the use of the MHSA funds is limited to expenditures for those portions of the building housing MHSA and mental health specific programs and/or services.

**Section 3714, subdivision (b)**

**Specific Purpose:** Section 3714, subdivision (b) specifies that the “buildings” acquired/renovated/constructed with Capital Facilities funds are limited to structures that are secured to a foundation and permanently affixed to the ground.

**Rationale for Necessity:**

This regulation is necessary to ensure that any buildings purchased and/or renovated with Capital Facilities funds are permanent structures. Section 3714, subdivision (d) (see below) requires that buildings utilizing Capital Facilities funds are to be used for MHSA and other mental health programs, services and/or supports for a minimum of 20 years. Additionally, the buildings purchased with Capital Facilities funds are required to meet the regulatory requirements contained in section 3714, subdivision (c) below. As the County is required to use the funds for the expansion of the capacity to existing programs, services and/or supports, any structure that is not “permanent” jeopardizes this requirement. Capital Facilities funding is limited and, therefore, is expected to be used as infrastructure support for programs. This regulation ensures that the limited funds are used for buildings that will be available for the long-term and not used to purchase cars or other mobile vehicles, even though these are often used to deliver services. The Department believes this interpretation follows the intent of the Mental Health Services Act.

**Section 3714, subdivisions (c), (c)(1) and (c)(2)**

**Specific Purpose:** Section 3714, subdivisions (c), (c)(1) and (c)(2) allow for the expenditure of Capital Facilities funds to acquire/renovate/construct a building when one of two requirements is met.

**Rationale for Necessity:** These regulations are necessary to inform the County that the use of Capital Facilities funds to acquire/renovate/construct a building is an appropriate use of said funds as long as one of the two specified requirements is met. Both of the requirements are consistent with the requirements contained in section 3400, subdivision (a) that specifies that the County shall utilize Mental Health Services Act funds “only to establish or expand mental health services and/or supports...”

Additionally, reference is made to the County’s Three-Year Program and Expenditure Plan as the components of the Plan as well as the requirements for the development of the Plan are contained in section 3310 of the regulations referenced above. Requiring that new programs, services and/or supports or the expansion of existing services and supports be linked to the Three-Year Program and Expenditure Plan ensures that the requirements for expenditures follow the approved process. The approved process requires that stakeholders be involved in determining the appropriate programs, services and/or supports for the particular county and that the General Standards (specified in section 3320) be adhered to. The General Standards include: Cultural Competence; Client Driven; Community Collaboration; Family Driven; Wellness,

Recovery, and Resilience Focused; and Integrated Service Experiences for clients and their families.

**Sections 3714, subdivisions (d) and (d)(1)**

**Specific Purpose:** Section 3714, subdivision (d) requires that buildings acquired, constructed and/or renovated with Capital Facilities funds are to be used for the provision/administration of MHSA and other mental health programs for a minimum of 20 years. Section 3714, subdivision (d)(1) further extends the 20-year obligation if Capital Facilities funds are used to renovate a building originally purchased/constructed/renovated with Capital Facilities funds.

**Rationale for Necessity:** These regulations are necessary to establish a definitive time period for the public good and satisfy its fiduciary responsibility to the taxpayers, stakeholders and California communities regarding publicly funded activities. The use of Capital Facilities funds should “produce long-term impacts with lasting benefits that move the mental health system...” toward the goals of the MHSA. The Department has the authority to establish time periods that constitute how capital facilities will “produce long-term impacts.” The Department feels the 20-year service requirement is in keeping with the stated goals for the Capital Facilities and Technological Needs component and is consistent with requirements of other publicly-funded programs that allow the acquisition/utilization of real property. The Department is currently drafting regulations to govern the MHSA Housing Program which will provide permanent supportive housing to individuals with mental illness and, when appropriate, their families. These

regulations will also require a minimum 20-year commitment to serving MHSA clients when MHSA monies are used for the funding of the housing development.

Also required in this section is a 20-year obligation when Capital Facilities funds are used to renovate a building initially acquired/constructed/renovated with Capital Facilities funds. This regulation is necessary as a County could potentially construct a building with Capital Facilities funds in year 01, renovate this same building in year 09 and have met the 20-year obligation in year 21. In order to protect the public investment and ensure that the purposes and goals of the MHSA are safeguarded, the Department is requiring that the 20-year obligation begin anew if Capital Facilities funds are used to renovate a building initially purchased/renovated/constructed with Capital Facilities funds. Therefore, the County obligation on the building constructed with Capital Facilities funds in year 01 and renovated in 09 is as follows: Twenty year obligation for the initial purchase which would end in year 21. However, as the building is renovated in 09, the 20 year obligation begins anew at the time the renovation is completed. Therefore, the 20-year obligation for the use of the building is extended, resulting in a total of a 29 year obligation for use of the building.

**Sections 3714, subdivision (e)**

**Specific Purpose:** This regulation requires that if Capital Facilities funds are used for the purchase of land, the County will assume a 20-year obligation for the use of the building(s) on this land, regardless of the funding source for the building(s).

**Rationale for Necessity:** This regulation is necessary to protect the public investment by ensuring that the purposes and goals of the MHSA are met. The failure by the Department to place this requirement in regulations would allow the County to purchase land with Capital Facilities funds with no obligation for the use of any building(s) subsequently constructed on the land. This regulation will ensure that any use of Capital Facilities funds will place a mandate on the County for the use of the buildings for MHSA and other mental health programs for a minimum of 20 years. It is also necessary to specify that the 20-year obligation is not waived if funds other than Capital Facilities funds are used to construct the building. The use of Capital Facilities funds to purchase land carries a 20-year obligation for the use of the land, regardless of the funding source of the building(s). (See the Rationale for Necessity for Section 3714(d) for justification of the 20-year obligation.)

**Section 3714, subdivisions (f), (f)(1), (f)(2), (f)(3), (f)(4), (f)(5), (f)(6) and (f)(7)**

**Specific Purpose:** These regulations are necessary to inform the County that federal, state, and local laws apply to buildings acquired, constructed and/or renovated with Capital Facilities funds. The list of applicable laws and regulations is not all inclusive but rather provides examples of federal/state and local laws that may apply.

**Rationale for Necessity:** These regulations are necessary to inform the County that existing laws apply to all buildings constructed, acquired and/or renovated with Capital Facilities funds. The Department expects Counties to abide by laws in existence and to comply with any new laws that may impact the proposed building.

Generalization has been used regarding zoning and building codes, fire safety requirements, environmental reporting and requirements, and hazardous materials requirements as these requirements may vary from county to county. The regulation requiring compliance with the Americans with Disabilities Act (ADA) is to inform the County of the necessity to comply with the ADA, when applicable. The Department does not have direct oversight of projects funded with MHSA funds or provide guidance to the County on acquisition, construction, and/or renovation of buildings. It is expected that the County will act independently in compliance with any and all applicable laws. Additionally, depending on variables, such as the age of a building, the ADA may not be applicable. It is expected that the County will research and comply with the ADA as required.

Again, specific reference is being made to the discrimination laws specified in California Government Code section 11135. This specific reference is necessary to inform the County that California law regarding discrimination based on race, national origin, ethnic group identification, religion, sex, color, or disability is applicable and enforceable. This law is relevant as it speaks to "...any program or activity that is conducted, operated, or administered by the state or by the state agency, is funded directly by the state, or receives any financial assistance from the state." Because the Department allocates State MHSA funds to the counties, it has a duty and obligation to ensure funds under the Capital Facilities and Technological Needs component comply with relevant regulations.

**Section 3714, subdivision (g)**

**Specific Purpose:** This regulation requires that each building purchased with Capital Facilities funds or built on land purchased with Capital Facilities funds have fire, disaster and liability insurance.

**Rationale for Necessity:** This regulation is necessary to protect the public interest in case of a disaster in which the building purchased with Capital Facilities funds is damaged or totally destroyed due to a fire or other disaster. By having the appropriate insurance, the cost outlay by the County for repair/rebuilding will be minimized. The regulation also ensures that the County has liability insurance. The building(s) purchased with Capital Facilities funds will operate to serve the general public as well as necessary County staff. The need for liability insurance is a cost of doing business for any building owner as accidents can and do happen and the ability of the injured party to sue is a real possibility. Therefore, necessary and suitable insurance will definitely assist in protecting the investment of public funds.

**Section 3714, subdivision (h).**

**Specific Purpose:** This regulation requires the County to ensure that expenditures for land and/or buildings, including renovations, are reflective of what a prudent buyer would pay.

**Rationale for Necessity:** This regulation is necessary to hold the County accountable for the decisions made for the expenditure of Capital Facilities funds for land and/or buildings. The prudent buyer would solicit multiple bids for building construction and/or

renovation as well as make counter offers when land and/or buildings are being purchased. While it is acknowledged that the County has an interest in seeking the best prices in these areas to get more for their money, this regulation just reinforces that requirement and allows the Department to hold the County accountable if they fail in this regard.

**(12) Section 3725. Work Plans for Capital Facilities Projects.**

**Section 3725, subdivision (a)**

**Specific Purpose:** This regulation states that in order to request Capital Facilities funds the County needs to submit a work plan(s).

**Rationale for Necessity:** This regulation is necessary as Capital Facilities funds will only be released when the County has submitted a work plan(s). This regulation informs the County that the completion/approval of a Capital Facilities work plan establishes the County's Capital Facilities segment of the Capital Facilities and Technological Needs component. Additionally, the County is informed that there is no limit to the number of work plans (projects) that can be in process at any given time.

**Section 3725, subdivisions (b) and (b)(1)**

**Specific Purpose:** These regulations are the introduction to the Capital Facilities work plan and the first requirement which is the work plan title.

**Rationale for Necessity:** These regulations are necessary as the mechanism to request funds for the Capital Facilities segment is the work plan. The Department will use the work plan to assess the County's proposed project and its use of the Capital Facilities funds in accordance with the MHSA and pertinent regulations. The information provided by the County within the work plan will assist the Department in the approval of the proposed expenditure of Capital Facilities funds.

The work plan is the method by which the County may request funds for land purchase and/or to purchase/construct/renovate buildings in which MHSA and other mental health programs and services are provided. A title to the work plan is necessary for review and tracking purposes. The Department expects to receive multiple Capital Facilities work plans from some counties. A title allows the Department and the County to communicate regarding a specific work plan.

**Section 3725, subdivisions (b)(2), (b)(2)(A) and (b)(2)(B)**

**Specific Purpose:** These regulations require the County to provide the purpose of the project which includes a description of how the project will provide new services or expand existing services, and/or if the project is for administrative offices, how will this augment/support mental health services.

**Rationale for Necessity:** It is necessary for the County to provide the purpose of the project as the Department has the responsibility to review and approve all uses of Capital Facilities funds through a work plan. The Department will use the information provided on the work plan to evaluate the County's use of the funds in compliance with the MHSA.

The identification of how the construction/acquisition and/or renovation will provide new programs/services or expand the capacity of existing programs/services is necessary as the Department has responsibility for overseeing the MHSA and ensuring that the mandates of non-supplant are met. In addition to adding regulations regarding non-supplant, the Department established in section 3400, subdivision (a) that MHSA funds

could only be used to establish or expand mental health services and/or supports. This requirement provides the Department some measure and/or indicator that the County is in compliance with section 3400, subdivision (a) that the funds are being used to establish or expand mental health programs, services and/or supports. The provision of new programs, services and/or supports and the expansion of existing mental health services are consistent with the mandate of the MHSA. The MHSA identifies the purpose of the Capital Facilities and Technological Needs component as providing the County with funds to support infrastructure expansion and the need of the County to create these new and expanded programs. The information requested in this regulation provides the Department the ability to identify the County's intention regarding this requirement.

The MHSA seeks to transform the public mental health system through a myriad of services that will expand and provide new programs and projects to communities. Further, the Department recognizes that essential to this expansion are the administrative costs, functions and personnel required by the County to implement the MHSA programs. Additional services and supports to MHSA clients will necessitate additional administrative staff to oversee these increased functions of the County's mental health program. Therefore, the Department is requiring the County to describe the relationship between the construction/acquisition and/or renovation of administrative offices and the provision of the mental health services identified in the County's Three-Year Program and Expenditure Plan.

**Section 3725, subdivision (b)(3), (b)(3)(A) and (b)(3)(B)**

**Specific Purpose:** This regulation requires the work plan to specify the location of the project. The location information is to include the address of the project as well as a description as to how the location was chosen.

**Rationale for Necessity:** This regulation is necessary to provide content and context to the work plan and inform stakeholders of the County's intent to acquire/construct/renovate at this specific location. The Department requires a County to submit a work plan for a specific land site and/or building. The address and the location of the proposed project provide the Department and stakeholders with basic and rudimentary information. Also, by providing information on the location selection helps to ensure that the County took different factors into consideration such as the proximity to public transportation and if the location helps any disparities in services.

**Section 3725, subdivision (b)(4)**

**Specific Purpose:** Section 3725, subdivision (b)(4) specifies that the County must describe the building type and whether the building is an acquisition that will/will not require renovation or if the building will be new construction.

**Rationale for Necessity:** This regulation is necessary to provide the Department with necessary information to assess and make approval decisions based upon the type of building (church, warehouse, garage, office space, primary care facility, etc.) being renovated or if the work plan is for new construction. This information will provide the

Department with the information necessary in order to assess the appropriateness of the project and the funds being requested.

**Section 3725, subdivisions (b)(5), (b)(5)(A) and (b)(5)(B)**

**Specific Purpose:** Sections 3725, subdivisions (b)(5), (b)(5)(A) and (b)(5)(B) require the County, when non-mental health services/supports are provided in a building constructed, acquired, and/or renovated with Capital Facility funds, to describe the percentage of space that will be designated for mental health services and supports, and the relationship between the mental health services and supports and the non-mental health programs and services located in the building.

**Rationale for Necessity:** These regulations are necessary to provide the Department with critical detail on the sharing of space with entities outside of the mental health system. This information is necessary for the protection of public funds pursuant to the California Constitution. It is clear in the MHSA that MHSA funds are available for and intended to be used for the good of Californians with mental illness. It is equally clear that MHSA funds are not intended for anything other than mental health services. However, the integration of mental health services with other services such as primary care or vocational services is a positive and normalizing experience and co-location of integrated services is considered a best practice. By requiring the County to identify an intention to co-locate mental health services and supports with non-mental health program and services and to designate allocation of space between the two uses, the Department is able to fulfill its fiduciary responsibility in the administration of public funds. The Department will utilize this information to ensure that costs are comparable

for the space/feet dedicated to mental health services. It is required (See section 3725 subdivision (b)(6)(E)) that any non-mental health programs and services located within a building funded with Capital Facilities funds will provide the necessary revenue for the space occupied. Further, this regulation is necessary to require documentation of the relationship between the mental health services and the co-located services. This information is necessary for the Department to make an assessment on appropriateness of the co-location.

**Section 3725, subdivisions (b)(6), (b)(6)(A), (b)(6)(B), (b)(6)(C), (b)(6)(D) and (b)(6)(E)**

**Specific Purpose:** Section 3725, subdivision (b)(6) requires the County to submit a budget and budget narrative for the proposed building including the costs for the acquisition, construction and/or renovation of the building, a description of how the County will meet the ongoing operating costs of the building for the 20-year obligation period, amount requested for the Capitalized Repair/Replacement Reserve, the amount requested for Predevelopment Costs, if any, and the amount of revenue from other sources, if the building will house functions other than mental health programs, services and supports.

**Rationale for Necessity:** These regulations are necessary to introduce the requirement for a proposed budget and narrative as part of the information to be included on each work plan. Based upon various factors, such as whether the work plan consists of a renovation only or the construction of a building, or if Capitalized Repair/Replacement Reserve funds are being requested, the County will need to

provide a budget and budget narrative consistent with the work plan. In essence, the budget and budget narrative complete the picture of the project. The Department will base approval of funds, in part, on the amount requested in the proposed budget. In addition, this is necessary for the Department to fulfill its fiduciary duty in the protection of public funds.

The specific items to be addressed in this section are justified below.

(A) Proposed costs for the acquisition, construction, and/or renovation of the building.

This information is necessary in order to inform the Department of the specific type of project that the County plans to undertake. Additionally as the Department has the responsibility to approve the expenditure of the MHSA funds through the Capital Facilities and Technological Needs component, it is necessary for the Department to know the cost of the project. In this way the Department can determine if the amount of funds being requested are reasonable for the type of project. For example, the amount of funds requested for a renovation should not be as great as for the construction of a new building.

(B) A description of how the County will meet the costs of operating the property/building for the 20-year obligation.

This regulation is necessary to allow the Department to fulfill its fiduciary responsibility by ensuring that the County has a plan and identified funding source(s) to meet the costs of ongoing operation and maintenance of the building into which public funds have been invested. A work plan with funding sources indicates due diligence on the part of

the County to ensure that the building does not fall into disrepair and become uninhabitable potentially resulting in a future request to the State General Fund for additional funding.

(C) The amount requested for the Capitalized Repair/Replacement Reserve.

This regulation is necessary to provide the County the ability to establish a Capitalized Repair/Replacement Reserve. It is necessary to provide such an option to allow the County to establish a prudent funding mechanism for future use when and if the building requires costly repairs or replacement of expensive items. Inclusion of this budget line item is the only way that the County can establish this reserve using Capital Facilities funds.

(D) The amount requested, if any, for Predevelopment Costs.

This regulation is necessary to provide the County the ability to pay for costs that may be necessary to test the validity of proceeding with a particular project. The predevelopment costs that can be paid for with Capital Facilities funds are specified in section 3750. These allowable costs are consistent with those that a developer of a property site would incur to ensure that the investment is sound.

(E) The amount from other sources if the building will be used for other than the provision of mental health programs/services/supports.

This regulation is necessary to require the County to indicate the dollar amount to be contributed towards the total cost of the building when it will be occupied by both mental health and non-mental health programs/services/supports. In fulfillment of the MHSA vision of integrated services, it will not be unusual to have the County propose a project in which mental health services are co-located with other services commonly used by clients, such as medical, dental, vocational services, etc. In its review, the Department will correlate information regarding space allocation of non-mental health programs and this revenue contribution.

**Section 3725, subdivision (b)(7)**

**Specific Purpose:** Section 3725, subdivision (b)(7) requires the County to submit, as part of the work plan, a timeline for construction/renovation, including the proposed date of occupancy.

**Rationale for Necessity:** This regulation is necessary to require the County to provide information regarding completion of the project. The construction/renovation timeline should coincide with the proposed date of occupancy. The Department is charged with oversight of the public funds provided to the County through the MHSA. It is therefore the responsibility of the Department to ensure that the projects for which funds have been requested have realistic timeframes and dates in which the work to construct/renovate the building is accomplished. This requirement also provides stakeholders and other interested parties with information as to the anticipated date the building will be operational.

### **Section 3725, subdivision (c)**

**Specific Purpose:** This regulation informs the County that a work plan involving the construction/renovation of a restrictive setting is required to provide additional information about the project.

**Rationale for Necessity:** This regulation is necessary as State law (Welf. & Inst. Code section 5847, subdivision (a)(5)) requires that a restrictive setting provide additional justification for the use of MHSA funds for a restrictive setting. (See Rationale for Necessity for section 3740, Restrictive Setting.) This regulation refers the County to the relevant section where the additional information to be included on the work plan for a restrictive setting is delineated.

### **Section 3725, subdivision (d)**

**Specific Purpose:** This regulation informs the County that a work plan involving the Purchase of Land is required to provide specific information regarding the purchase.

**Rationale for Necessity:** This regulation is necessary as the purchase of land is an allowable use of Capital Facilities funds. However, the purpose of the Capital Facilities segment of the Capital Facilities and Technological Needs component is the expansion of buildings within the county in which mental health programs/services/supports are provided to mental health clients and their families. Therefore, while Capital Facilities funds may be used to purchase land, the County must understand that the purchase of land must culminate with the acquisition of a building in which mental health clients are

provided services. This regulation refers the County to section 3755, Purchase of Land, where the additional information to be included on the work plans is delineated.

**Section 3725, subdivision (e)**

**Specific Purpose:** This regulation is necessary to inform the County that a lease-to-own agreement is an acceptable expenditure of Capital Facilities funds. However, a work plan involving a lease-to-own agreement must include additional information.

**Rationale for Necessity:** This regulation is necessary as a lease-to-own agreement is an allowable use of Capital Facilities funds. However, if the County has submitted a work plan for the leasing of a building, additional information is to be included on the work plan. This regulation refers the County to section 3760, Lease-to-Own Agreements, where the additional information to be included is delineated.

**(13) Section 3730. Renovation.**

**Section 3730, subdivisions (a), (a)(1) and (a)(2)**

**Specific Purpose:** These regulations specify the additional information that must be provided on the work plan when Capital Facilities funds are being requested for renovation.

**Rationale for Necessity:** These regulations are necessary as section 3725, Capital Facilities work plans lays out the information to be included on the work plan when requesting Capital Facilities funds. However, when the County is proposing a project that involves renovation, the Department requires additional information on the project in order to adequately protect the use of public funds. These regulations provide the County with the specifics of the additional information to be provided.

(1) Scope of the renovation.

The County needs to describe in the work plan the extent of the renovation. The amount of information provided needs to be sufficient to justify/support the amount of Capital Facilities funds being requested.

(2) Prior use and ownership of the building.

An allowable expenditure of Capital Facilities funds includes the renovation of County and/or of privately-owned building(s). In either case, the County has to provide

information on the renovation that includes the ownership of the building. If the building is privately-owned, the requirements of section 3730, subdivision (b) must be met. It is therefore necessary for the County to provide information on the ownership and prior use of the building for purposes of the Department enforcing the requirements of section 3730, subdivision (b).

**Section 3730, subdivisions (b), (b)(1), (b)(2) and (b)(3)**

**Specific Purpose:** Section 3730, subdivisions (b), (b)(1), (b)(2) and (b)(3) inform the County that a work plan for renovation of a privately-owned building shall include documentation as to the method employed to protect the County's interest in the renovation and use of the property. These regulations provide three acceptable methods that the County may use for this purpose, including but not limited to, instituting a deed restriction, amending loan agreements, or acquiring an interest in the property.

**Rationale for Necessity:** These regulations are necessary for the Department to fulfill its fiduciary duty to protect the investment of public funds. This protection is indicated in the requirement for the County to submit documentation of the method used to secure the County's interest in the renovation of a privately-owned building. Each of the methods in these regulations provide for a legally binding arrangement between the County and the owner of the building. The three examples include, instituting a deed restriction, amending the loan agreement to specify that all improvements are the property of the County and the County has the option of removing said improvements, and acquiring an interest in the property. Each of these methods is commonly used by

Counties to legally secure interest when investing in property. Therefore, by requiring the County to secure its interest, the Department ensures that MHSA funds spent on privately-owned facilities are not just spent to improve the asset, thus increasing its value, but rather provides the County with an interest in the property, thereby allowing it to meet client needs for the next 20 years. This furthers the goal required by the Capital Facilities and Technological Needs component to increase the County's infrastructure on a long-term basis.

**(14) Section 3740. Restrictive Setting.**

**Section 3740, subdivision (a)**

**Specific Purpose:** This regulation refers the County to the definition of restrictive settings specified in section 3200.257 when determining what constitutes a “restrictive setting” and provides the introduction to the requirements that must be met when requesting Capital Facilities funds for a building to be used as a “restrictive setting”.

**Rationale for Necessity:** This regulation is necessary because the Department is required by Welfare and Institutions Code section 5847, subdivision (a)(5) to ensure that requests for Capital Facility funding for a restrictive setting demonstrate that the needs of the people to be served cannot be met in a less restrictive or more integrated setting. In order to maintain consistency with section 5847, subdivision (a)(5), the Department is requiring the County to comply with the requirements of these regulations related to allowable expenditures, general requirements, work plans, and renovation and introduces the additional elements required for a restrictive setting.

**Section 3740, subdivision (a)(1)**

**Specific Purpose:** Section 3740, subdivision (a)(1) requires the County to demonstrate that there is an unmet need for a restrictive setting in order to adequately serve individuals with serious mental illness and/or serious emotional disturbance within the county.

**Rationale for Necessity:** This regulation is necessary to make specific the requirements of Welfare and Institutions Code section 5847, subdivision (a)(5). The MHSA embodies a mental health delivery system that, in part, is integrated and supports wellness, recovery and resiliency. A proposal to use funds for a restrictive setting is potentially incongruent with the sentiments stated above. Thus, any building acquired, constructed and/or renovated for a restrictive setting is subject to an additional standard of assessment to ensure there is no other method of accomplishing this unmet need. By accounting for the unmet need for a restrictive setting in order to adequately serve individuals with a serious mental illness and/or serious emotional disturbance, the County is satisfying one of the requirements in order to receive Capital Facilities funds for this purpose.

**Section 3740, subdivision (a)(2)**

**Specific Purpose:** Section 3740, subdivision (a)(2) requires the County to demonstrate that the needs of individuals with serious mental illness and/or serious emotional disturbances cannot be met in a less restrictive or more integrated setting.

**Rationale for Necessity:** This section is necessary as further justification of the need for a restrictive setting. Welfare and Institutions Code 5847, subdivision (a)(5) states in part: “All plans for proposed facilities with restrictive settings shall demonstrate that the needs of the people to be served cannot be met in a less restrictive or more integrated setting.” This regulation coupled with section 3740, subdivision (a)(1) above, meets the requirements contained in the law.

### **Section 3740, subdivisions (a)(3) and (a)(4)**

**Specific Purpose:** Sections 3740, subdivisions (a)(3) and (a)(4) require the County to demonstrate that it was not feasible to build a restrictive facility using non-MHSA funds and the County's pursuit and subsequent inability to obtain other sources of funding.

**Rationale for Necessity:** These regulations are necessary to provide the Department the information necessary to oversee and assess the work plan. The Department has established the criteria contained in section 3740, subdivisions (a)(1)-(4), to determine if a proposed restrictive setting meets the criteria established in the law. Any building acquired, constructed and/or renovated for a restrictive setting is subject to an additional standard of oversight and assessment. As stated above, the MHSA embodies a mental health delivery system that is integrated and supports wellness, recovery and resiliency. While it is recognized that a restrictive setting is incongruent with these objectives, it is equally recognized that at times a restrictive setting is necessary. Thus, in fulfilling both the intent of the MHSA and the letter of the law, the Department has determined that Capital Facilities funds may be used for a restrictive setting, but only as a last resort. By demonstrating it was not feasible to build a restrictive facility using non-MHSA funds, including the County's pursuit and inability to obtain other sources of funding, the County is satisfying a portion of the criteria required to receive Capital Facilities funds for a restrictive setting.

**(15) Section 3745. Capitalized Repair/Replacement Reserve.**

**Section 3745, subdivision (a)**

**Specific Purpose:** This section informs the County that the Capitalized Repair/Replacement Reserve can only be used for buildings that were acquired/renovated/constructed with Capital Facilities funds.

**Rationale for Necessity:** The purpose of this regulation is to provide for a reserve of money which the County can access in order to keep buildings, in which MHSA and other mental health services, programs and supports are provided, in good repair. This regulation ensures that the reserve is not used for repairs/replacements, etc. of any/all County buildings, but is limited to those acquired with Capital Facilities funds.

**Section 3745, subdivision (b)**

**Specific Purpose:** This regulation allows the reserve to be used for repairs to building(s) acquired/renovated with Capital Facilities funds, as well as the replacement of major structural elements, equipment, etc. that maintains the integrity of the building.

**Rationale for Necessity:** This regulation is necessary to inform the County of the types of repairs and/or replacements that can be made to buildings using the reserve. A capitalized repair/replacement reserve allows a county to “commit” funds to a specific project so that when repairs, such as a new roof, are needed, the funds will be available. Additionally, the Department is responsible for ensuring funds are expended

in the most cost effective manner. It is the current practice of other State agencies that administer public funds for affordable housing to allow for/restrict the use of funds placed in a reserve to repair and/or replace major elements such as a roof, a water heater, etc. The major elements here have a significant bearing on the safety of the occupants and the fiscal integrity of the building. The day-to-day maintenance such as lighting, plumbing and painting are to be paid from other sources as a cost of doing business.

**Section 3745, subdivision (c)**

**Specific Purpose:** This regulation requires that the reserve be controlled, managed and disbursed by the County.

**Rationale for Necessity:** This regulation is necessary as the Capitalized Repair/Replacement Reserve consists of Capital Facilities funds. The Department deems this requirement necessary to ensure the protection of public funds that are to be used for the public good and to allow maximum flexibility and local control for use of the funds.

**(16) Section 3750. Capital Facilities Predevelopment Costs.**

**Section 3750, subdivision (a)**

**Specific Purpose:** This regulation informs the County that predevelopment costs may only be requested by the County when there is an approved Capital Facilities and Technological Needs component that includes a Capital Facilities segment.

**Rationale for Necessity:** This regulation is necessary to avoid situations where the County requests Capital Facilities funds for predevelopment costs prior to having an approved Capital Facilities and Technological Needs component that includes a Capital Facilities segment. While Capital Facilities funds may be used for costs associated with determining the feasibility of a specific project, the County is being informed that the Capital Facilities segment must be established within an approved Capital Facilities and Technological Needs component before funds for predevelopment costs will be approved.

**Section 3750, subdivision (a)(1)**

**Specific Purpose:** Section 3750, subdivision (1) informs the County that funds may be requested for predevelopment costs that are not associated to a specific project as long as the County has a Capital Facilities segment within the approved Capital Facilities and Technological Needs component.

**Rationale for Necessity:** This regulation is necessary to provide the County a funding source for necessary studies/fees that may be necessary prior to selecting the project that the County will develop. For example, the County may have several options in terms of location for a building. Allowing the County to utilize funds for various studies and fees, affords the ability to conduct environmental studies, engineering surveys, etc. on multiple locations. In this way, the County will be able to select the better building site with full disclosure of potential “pitfalls” rather than investing time and money in a project that may eventually fail.

**Section 3750 subdivisions (b), (b)(1), (b)(2), (b)(3), (b)(4), (b)(5) and (b)(6)**

**Specific Purpose:** These regulations inform the County of the specific predevelopment expenses for which Capital Facilities funds may be expended in the process of identifying and/or developing a building site for the provision of mental health services and supports. Regulations also limit the use of Capital Facilities funds to those predevelopment costs specifically identified in the regulations as subdivisions (b)(1) through (b)(6).

**Rationale for Necessity:** These regulations are necessary as the Department recognizes that property/construction/renovation projects are complex and require up-front costs that may or may not lead to a Capital Facility project. A County may need to complete a myriad of studies, incur legal fees and other such costs in order to ensure the property/building being proposed is a sound investment. Additionally, the County may not have access to funds for this purpose.

**Section 3750, subdivisions (c), (c)(1), (c)(2), (c)(3) and (c)(4),**

**Specific Purpose:** These regulations are necessary to inform the County that requests for predevelopment costs must include specific information.

**Rationale for Necessity:** These regulations are necessary to provide the County with information that when requesting funds for predevelopment costs the request shall include specific information. (See Rationale for Necessity for section 3750, subdivision (b)).

(c)(1) Name of county.

This information is needed for the purpose of identifying the County requesting the Predevelopment funds.

(c)(2) Date of request.

This information is required on any correspondence between the Department and the County for the purpose of ensuring timeliness to requests received.

(c)(3) Name, telephone number and e-mail address of County Contact.

A single contact for the Department is necessary. In this way, the Department will be contacting the person with the knowledge and ability to respond to any additional questions the Department may have. Additionally, it affords the County a single contact to which the Department will address all correspondence on a specific request.

(c)(4) Amount requested for predevelopment costs.

As the County is requesting funds for predevelopment costs it follows that the Department be informed of the specific amount that the County is requesting. Additionally, this information is necessary to ensure that the County is not exceeding the amount of money allocated for the Capital Facilities and Technological Needs component.

**(17) Section 3755. Purchase of Land.**

**Section 3755, subdivisions (a), (a)(1), (a)(2) and (a)(3)**

**Specific Purpose:** Section 3755, subdivisions (a), (a)(1), (a)(2) and (a)(3) inform the County that Capital Facilities funds may be used to purchase land with no MHSA funds budgeted for building or construction if the information/criteria specified in subdivisions (a)(1)-(a)(3) is provided.

**Rationale for Necessity:** These regulations are necessary to specify the conditions by which a County may purchase land without also requesting funds for construction of a building in which to provide mental health services and programs. Capital Facilities funds are to be used to provide the infrastructure to implement the services and programs outlined in the MHSA. As defined in section 3200.025, Capital Facilities is the “segment of the Capital Facilities and Technological Needs component under which the County acquires and develops land and/or constructs or renovates building(s) in which Mental Health Services Act programs and services and supports are provided.” Capital Facilities funds are to be used consistent with the allowable expenditures described in section 3712, and with the goal of producing long-term impacts with lasting benefits that move the mental health system toward the goals of the MHSA. The purchase of land in and of itself does not meet these stated goals. However, the Department recognizes that there may be occasions when only the purchase of land is feasible for a County at a given point in time. In order to secure that land for County use it may be necessary to acquire just the land with plans to develop the site at a later date. Additionally, the County may have to take steps toward obtaining the funds needed to acquire/construct

a building on the land. The information required of the County in subdivisions (a)(1) through (a)(3) provides the necessary verification that the County is moving toward the goals of the MHSA and the Capital Facilities segment.

**(18) Section 3760. Lease-to-Own Agreements.**

**Section 3760, subdivisions (a), (b), (c), (d), (d)(1) and (d)(2)**

**Specific Purpose:** These regulations specify that Lease-to-Own Agreements are allowable expenditures of Capital Facilities funds. (See section 3714, Allowable Capital Facilities Expenditures.) Additionally, section 3725, subdivision (e) requires additional information to be provided on the work plan when the County is requesting Capital Facilities funds for a Lease-to-Own Agreement. The specifics to be contained on the work plan are those that are contained in this section as subdivision (d).

**Rationale for Necessity:** These regulations are necessary to inform the County of the conditions to be complied with when Capital Facilities funds are used to obtain a building through a lease-to-own agreement and the additional information to be included on the work plan.

(a) Capital Facilities funds used to acquire a building(s) through a Lease-to-Own Agreement shall be owned by the County at lease conclusion.

As stated throughout, Capital Facilities funds are to be used to provide the infrastructure to implement the services and programs outlined in the MHSA. This purpose can best be achieved when the County has ownership and, thereby, permanent oversight of the building and the programs/services housed within the building. However, as pointed out in other areas, such as Purchase of Land, it is not always feasible for the County to have sufficient funds to purchase a building outright. Therefore, other options are made

available to the County by which it can eventually achieve the purpose of the MHSA and more specifically, the Capital Facilities segment of the Capital Facilities and Technological Needs component which is the acquisition of land/buildings in which mental health programs and services are provided.

(b) MHSA programs/services and/or administrative support provided within the building for the duration of the lease.

In order to meet the purpose of the Capital Facilities segment of the Capital Facilities and Technological Needs component, it is necessary that the County ensure that MHSA and other mental health programs/services are provided within the building during the time the County is operating under a lease agreement. The Department therefore deems this requirement necessary to ensure the protection of public funds that are to be used for the public good, which in this case is the provision of mental health programs and services.

(c) Twenty-year obligation for the use of the building as required in section 3714, subdivision (d).

This regulation is necessary to inform the County that the 20-year obligation for the use of the property applies to Lease-to-Own Agreements. For additional justification, refer to the Rationale for Necessity for section 3714, subdivision (d).

(d) Additional information to be included on work plans to lease-to-own a building.

These regulations are necessary to specify the additional information to be addressed on a work plan when acquiring a building through a lease-to-own agreement. Capital Facilities funds are to be used consistent with the allowable expenditures described in section 3712, and with the goal of producing long-term impacts with lasting benefits that move the mental health system towards the goals of the MHSA. A lease agreement in and of itself does not meet these stated goals. However, the Department recognizes that there may be instances when a County may not have funds for a full purchase or may choose to make funds available for the purchase at a later date. As such, the Department requests information that assures stakeholders and Department reviewers that the County has a bona fide plan for the eventual ownership of the building and funds are used for the stated purpose. The additional information required on work plans for lease-to-own agreements are: an explanation of why the building(s) is being leased-to-own rather than purchased and a description of the length and terms of the lease agreement. The provision of this information provides the Department with the necessary assurance that the County has a plan for the eventual ownership of the building and thereby the Department is fulfilling its obligation for the protection of the public funds.