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TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

BOARD MEETING OF NOVEMBER 14, 2001

Michael Jones, Chair  
C. Kent Conine, Vice-Chair

Beth Anderson, Member  
Vidal Gonzalez, Member

Shadrick Bogany, Member  
Norberto Salinas, Member

*A G E N D A*

**BOARD MEETING  
TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS  
Capitol Extension, 1400 Congress, Room E1.028, Austin, Texas 78701  
November 14, 2001 9:30 a. m.**

**AGENDA**

**CALL TO ORDER, ROLL CALL  
CERTIFICATION OF QUORUM**

Michael Jones  
Chair of Board

**PUBLIC COMMENT**

The Board will solicit Public Comment at the beginning of the meeting and will also provide for Public Comment on each agenda item after the presentation made by department staff and motions made by the Board.

Item 1 Presentation, Discussion and Possible Approval of Minutes of Board Meeting of October 17, 2001 Michael Jones

**EXECUTIVE SESSION**

Michael Jones

Personnel Matters  
Personnel Matters on Executive Director Position and Applications  
Litigation and Anticipated Litigation (Potential or Threatened under Sec. 551.071 and 551.103, Texas Government Code Litigation Exception)  
Consultation with Attorney Pursuant to Sec. 551.071(2), Texas Government Code  
Consultation with Attorneys Concerning Litigation on Cause No. GN102058, Kenneth H. Mitchell, The Grand Texan, Ltd., and One Buena Vista, Ltd. v. Texas Department of Housing and Community Affairs, in the 53<sup>rd</sup> District Court of Travis County  
The Board may discuss any item listed on this agenda in Executive Session

**OPEN SESSION**

Michael Jones

Action in Open Session on Items Discussed in Executive Session

Item 2 Presentation, Discussion and Possible Approval of Low Income Housing Tax Credit Items: Michael Jones

- a) List of Projects from the 2001 LIHTC Application Round Waiting List in Order of Priority:  
#1086, Mission Oaks, Refugio, Texas, Region 8B; #1055, Laredo Viejo Apts., Laredo, Texas, Region 8B; #1143, Laredo Vista, Laredo, Texas, Region 8B; #1028, Spindletop Estates, Beaumont, Texas, Region 5; #1039, Park Meadows, Boerne, Texas, Region 8A; #1167, Bexar Creek, San Antonio, Texas, Region 8A; #1095, Pueblo Montana, El Paso, Texas, Region 10; #1012, Winchester Lake, Bastrop, Texas, Region 7; #1098, Burgundy Palms Apartments, El Paso, Texas, Region 10; #1036, Ennis Seniors Estates, Ennis, Texas, Region 3; #1007, Grand Texas Seniors, McKinney, Texas, Region 3
- b) Approval and Possible Issuance of Determination Notices to Tax-Exempt Bond Transactions known as:  
01406 Hillside Apartments, Dallas, Texas  
01435 Oak Hollow, Dallas, Texas  
01442 Buena Vista Seniors, Cleburne, Texas

- 01448 Riverside Meadows, Austin, Texas
- c) Approval of Request for Extension of Deadline to Place in Service for projects known as:  
99022, Eban Village Apartments Phase 11  
99111, Roseland Townhomes, Dallas, Texas
  - d) Approval of Request for Extension for Commencement of Substantial Construction for Projects known as:  
00058, Windfern II Townhomes, Houston, Texas  
00062, King Fisher Creek Apartments, Austin, Texas  
00124, Las Brisas Apartments, Del Rio, Texas  
00133, Cameron Village Apartments, Alice, Texas  
00139, Talmadge at Park Central Apartments, Amarillo, Texas  
00163, Las Quintas Apartments, Eagle Pass, Texas
  - e) Approval of the Final Qualified Allocation Plan and Rules for the Year 2002 Allocation Round for the Low Income Housing Tax Credit Program
- Item 3 Presentation, Discussion and Possible Approval of Report on Finance Items: : C. Kent Conine
- a) Approval of Proposed Issuance of Multifamily Mortgage Revenue Bonds For the Hillside Apartments, Dallas, Texas in an Amount not to Exceed \$12,900,000 and Other Related Matters
  - b) Approval of Proposed Issuance of Multifamily Mortgage Revenue Bonds For the Oak Hollow Apartments, Dallas, Texas in an Amount not to Exceed \$8,625,000 and Other Related Matters
- Item 4 Presentation, Discussion and Possible Approval of Report from Programs Committee: Shadrick Bogany
- a) Appointment of Members to the Advisory Committee for the Support of Individuals with Disabilities:  
Ann Denton, Austin, Texas  
Jean Langendorff, Cottonwood Shores, Texas  
Jonas E. Schwartz, Austin, Texas  
Wilma Crain, Amarillo, Texas  
David Wood, Houston, Texas
  - b) Approval of Award Resulting from an Appeal of Staff Recommendations in the 2001 HOME Funding Cycle for Twin City Mission, No. 20010117, TBRA Activity, Score of 218, Region 7 for an Award of \$335,700 With 45 Units

## REPORT ITEMS

Executive Directors Report  
SF Bond Report  
State-Federal Liaison

## ADJOURN

Michael Jones  
Chair of Board

*To access this agenda and details on each agenda item in the board book, please visit our website at [www.tdhca.state.tx.us](http://www.tdhca.state.tx.us) or contact the Board Secretary, Delores Groneck, TDHCA, 507 Sabine, Austin, Texas 78701, 512-475-3934 and request the information.*

*Individuals who require auxiliary aids, services or translators for this meeting should contact Gina Esteves, ADA Responsible Employee, at 512-475-3943 or Relay Texas at 1-800-735-2989 at least two days before the meeting so that appropriate arrangements can be made.*

*ROLL CALL AND CERTIFICATION OF QUORUM*

**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS  
BOARD MEETING  
NOVEMBER 14, 2001**

**ROLL CALL**

<b>Name</b>	<b>Present</b>	<b>Absent</b>
Michael Jones, Chair	_____	_____
C. Kent Conine, Vice-Chair	_____	_____
Beth Anderson, Member	_____	_____
Shadrick Bogany, Member	_____	_____
Vidal Gonzalez, Member	_____	_____
Norberto Salinas, Member	_____	_____

*AGENDA ITEM NO. 1 – APPROVAL OF MINUTES OF BOARD MEETING OF OCTOBER 17,  
2001*

**BOARD MEETING  
TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS  
Capitol Extension, 1400 Congress, Room E2.026, Austin, Texas 78701  
October 17, 2001 9:30 a. m.**

**Summary of Minutes**

**CALL TO ORDER, ROLL CALL  
CERTIFICATION OF QUORUM**

The Board Meeting of the Texas Department of Housing and Community Affairs of October 17, 2001 was called to order by Board Chair Michael Jones at 9:15 a.m. It was held at the State Capitol Extension, Room E2.026, 1400 Congress, Austin, Texas. Roll call certified a quorum was present. Shadrick Bogany was absent.

Members present:

Michael Jones -- Chair

Elizabeth Anderson -- Member

C. Kent Conine -- Member

Vidal Gonzalez -- Member

Norberto Salinas -- Member

Staff of the Texas Department of Housing and Community Affairs was also present.

**PUBLIC COMMENT**

The Board will solicit Public Comment at the beginning of the meeting and will also provide for Public Comment on each agenda item after the presentation made by department staff and motions made by the Board.

Mr. Jones called for public comment and the following either gave comments at this time or preferred to wait until the agenda item was presented.

Tres Davis, Vice President of Housing Services, Grant Works, Austin, Texas

Mr. Davis asked to speak when agenda item 3(g) was presented.

Michael Fields

Mr. Fields was in attendance for agenda item 2(c) to answer any questions the board members might have.

David Heil, Sr. Vice President, Allied Mortgage Capital

Mr. Heil stated he was speaking on the HOME Program funding recommendations. Allied Mortgage is the largest seller-servicer of 502 leverage-direct loans in the US. Their sole purpose is to facilitate rural lending. Allied Mortgage submitted an application in Region 3 funding under the HOME Program. They received a score of 133 but Allied felt according to their calculations they should have scored 197. He stated they failed to sign a resolution but he inquired about this and there was no response from TDHCA. He stated there is no bond money program that TDHCA can offer that can beat what they are able to offer. They were asked to provide a solution for rural development lending and did just that. TDHCA staff had allocated over a million dollars for Region 3 but only funded less than \$500,000. Allied Mortgage was asking for \$500,000 for Region 3, as this amount should be available.

Larry Washburn, LCM Management

Mr. Washburn stated they are the developers of Huffman Hollow Apartments in Huffman, Texas No. 99173 and this is under agenda item 2(b). He stated the original developer did not want to continue with the project when the contractor discovered he would have to personally guarantee the construction so LCM Management took over the project in April. There were additional requirements on the water system, then a huge amount of rain fell in their area, etc. so it has taken longer to place this complex in service. He requested an extension of time of 30 days to place in service.

Bob Sherman

Mr. Sherman asked to give comments when agenda item 2(a) was presented.

Granger McDonald

Mr. McDonald asked to speak when agenda items 2(a) and 4(c) were presented.

Patricia Wentworth

Ms. Wentworth asked to speak when agenda item 3(f) was presented.

Robert Chavira

Mr. Chavira asked to speak when agenda item 3(f) was presented.

Mayor Mancha

Mayor Mancha asked to speak when agenda item 3(f) was presented.

Bruce Spitzenagle

Mr. Spitzenagle asked to speak when agenda item 3(a) was presented.

Gilson Westbrook

Mr. Westbrook asked to speak when agenda item 3(a) was presented.

Al Price

Mr. Price asked to speak when agenda item 2(a) was presented.

Mike Harms

Mr. Harms asked to speak when agenda item 3(g) was presented.

Jewel Banks

Ms. Banks asked to speak when agenda item 3(g) was presented.

Steve Poppoon

Mr. Poppoon asked to speak when agenda item 4(e) was presented.

Mr. Jones closed the public comment period at 9:55 am but stated he will allow all those who completed witness affirmation forms to defer comments to a particular item to testify.

## **ACTION ITEMS**

- (1) **Presentation, Discussion and Possible Approval of Minutes of the Board Meeting of September 19, 2001**  
Motion made by C. Kent Conine and seconded by Beth Anderson to approve the Minutes of the Board Meeting of September 19, 2001.  
Passed - with 1 abstention (Mr. Gonzalez abstained as he was not in attendance at the August 21, 2001 meeting)

Mr. Jones stated at this time the Board will go into Executive Session.

## **EXECUTIVE SESSION**

Personnel Matters  
Personnel Matters on Executive Director Position and Applications  
Personnel Matters on Resignation of Current Executive Director and  
Appointment of Acting Executive Director  
Litigation and Anticipated Litigation (Potential or Threatened  
under Sec. 551.071 and 551.103, Texas Government Code  
Litigation Exception)  
Consultation with Attorney Pursuant to Sec. 551.071(2), Texas  
Government Code  
Consultation with Attorneys Concerning Litigation on

Cause No. GN102058, Kenneth H. Mitchell, The Grand Texan, Ltd., and One Buena Vista, Ltd. v. Texas Department of Housing and Community Affairs, in the 53<sup>rd</sup> District Court of Travis County

Consultation with Attorneys Concerning Pending Litigation Cause No. GN102420, The Encinas Group of Texas and William Encinas v. Texas Department of Housing and Community Affairs, et al in the 53<sup>rd</sup> Judicial District, Travis County, Texas

The Board may discuss any item listed on this agenda in Executive Session

The Board went into Executive Session at 9:55 a.m. and Mr. Jones stated: "This day, October 17, 2001, at a regular board meeting of Texas Department of Housing and Community Affairs held in Austin, Texas, the board of directors adjourned into a closed executive session, as evidenced by the following: The board of directors will begin its executive session today, October 17, 2001 at 9:55 a.m. The subject matter of this executive session deliberation is as follows: personnel matters; personnel matters on Executive Director position and application; personnel matters on resignation of current executive director and appointment of acting executive director; litigation and anticipated litigation, consultation with attorney pursuant to Section 551.071(2), Texas Government Code; consultation with attorneys concerning litigation on Cause No. GN102058, Kenneth H. Mitchell et al. v. Texas Department of Housing and Community Affairs; consultation with attorneys concerning pending litigation in Cause No. GN102420, the Encinas Group of Texas, et al. v. Texas Department of Housing and Community Affairs, et al.; and discussion of any item listed on our board agenda for the same date."

## **OPEN SESSION**

Action in Open Session on Items Discussed in Executive Session

The Board returned to Open Session at 11:07 am and Mr. Jones stated: "I hereby certify that the board of directors has completed its executive session of the Texas Department of Housing and Community Affairs on October 17, 2001 at 11:07 a.m. The subject matter of the executive session was as follows: personnel matters, action taken, none; personnel matters on Executive Director position and applications, action taken, none; personnel matters on resignation of current executive director and appointment of acting executive director, action taken, none; litigation and anticipated litigation (potential or threatened under Section 551.071 and 551.103 of the Texas Government Code), action taken, none, consultation with attorneys pursuant to Section 551.071(2), of the Texas Government Code, action taken, none; consultation with attorneys concerning litigation on Cause No. GN102058, action taken, none; consultation with attorneys concerning litigation in Cause No. GN102420, action taken, none; and discussion of any item listed on our board agenda for the same date, action taken none."

"I hereby certify that this board agenda meeting of an executive session of the Texas Department of Housing and Community Affairs is properly authorized pursuant to Section 551.103 of the Texas Government Code posted at the Secretary of State's Office seven days prior to the meeting pursuant to Section 551.044 of the Texas Government Code, that all members of the board of directors were present, with the exception of Shadrick Bogany, and that this is a true and correct record of the proceedings pursuant to the Texas Open Meetings Act, Chapter 551, Texas Government Code, signed by myself as Chair of the Board of the Texas Department of Housing and Community Affairs". Signed by Michael Jones

- (2) **Presentation, Discussion and Possible Approval of Low Income Housing Tax Credit Items:**  
a) **Approval of the 2001 LIHTC Application Round Recommended Waiting List for one or more of the following: Spindletop Estates, Beaumont, Texas; Mission Oaks, Refugio, Texas; Laredo Viejo Apartments, Laredo, Texas; Laredo Vista Apartments, Laredo, Texas**

Mr. Conine stated based on information presented in the Executive Session he would make a motion.

Motion made by C. Kent Conine and seconded by Norberto Salinas to table this item until the next meeting.  
Passed Unanimously

Mr. Charles Nwaneri, Acting LIHTC Manager, stated he needed to say something so the board will know the impact postponing this item would have on the LIHTC program.

Mr. Jones requested that Mr. Nwaneri and the Acting Executive Director discuss Mr. Nwaneri's concerns and they should be able to resolve all concerns.

Bob Sherman, Consultant

Mr. Sherman stated their project of Spindletop is on a tight schedule and if they could get the credits approved at this meeting instead of tabling this item, it would help tremendously. He asked that the Board use the 2001 QAP for making decisions and not the 2000 QAP.

Granger McDonald

Mr. McDonald spoke on behalf of Park Meadows Apartments, Boerne, Texas, which is on the waiting list. He was concerned that there is some type of priority on the waiting list and he felt it was not fair to have two projects on this list from the same city.

Al Price, Former State Representative, Beaumont, Texas

Mr. Price stated they await the further action of the Board and they are ready to proceed with the project.

- b) **Approval of the Request for Extension of the Deadline to Place in Service for:**  
**No. 99126 - Sunset Arbor Townhomes, Abilene, Texas**  
**No. 99173 - Huffman Hollow Apartments, Huffman, Texas**  
**No. 99197 - Sun Meadow Apartments, Alamo, Texas**  
**No. 00004 - Heatherwilde Park Apartments, Pflugerville, Texas**

Mr. Nwaneri stated there are several requests for extensions of the deadline to place in service. He further stated that Sunset Arbor Townhomes No. 99126 is in Abilene and is in the general set-aside. It is new construction for 220 low-income units and the amount of the award was \$1,000,880 and the project owners have requested an extension to December 15, 2001.

Motion made by C. Kent Conine and seconded by Beth Anderson to approve the extension for Sunset Arbor Townhomes, Abilene, Texas, No. 99126 to December 15, 2001.  
Passed Unanimously

Motion made by C. Kent Conine and seconded by Norberto Salinas to approve the extensions for Huffman Hollow Apartments, Huffman, Texas, No. 99173 to November 15, 2001; for Sun Meadow Apartments, Alamo, Texas, No. 99197 to December 31, 2001; and for Heatherwilde Park Apartments, Pflugerville, Texas No. 00004 to December 31, 2002.  
Passed Unanimously

- c) **Approval of Request for Extension of Commencement of Substantial Construction for:**  
**No. 00059 - Evergreen Townhomes, New Braunfels, Texas**  
**No. 00156 - Laguna Heights Apartments, Rio Grande City, Texas**

Motion made by Norberto Salinas and seconded by Beth Anderson to approve the request for extension of January 15, 2002 for commencement of substantial construction for Evergreen Townhomes, New Braunfels, Texas, No. 00059 and for Laguna Heights Apartments, Rio Grande City, Texas, No. 00156 to February 15, 2002.  
Passed Unanimously

- (3) **Presentation, Discussion and Possible Approval of Programmatic Items:**  
a) **Approval of Appeals Process and Adoption of Proposed Rules**

Mr. David Burrell, Director of Housing Programs, stated staff is requesting the approval of the Appeals Process and the adoption of the proposed rules. He stated the Appeals Process is presented in two stages, which are: (1) Staff Appeals Process and (2) Board Appeals Process. An applicant for funding can appeal the disposition of the application based upon an error by staff on: (1) misplacement of an application; (2) mathematical error; and (3) procedural error.

Motion made by C. Kent Conine and seconded by Vidal Gonzalez to approve the Appeals Process and adopt the proposed rules as presented by staff.  
Passed Unanimously

- b) **Appointment of New Colonia Resident Advisory Committee Primary Member:**



**Mr. Lionel Tamez of Willacy County  
and Appointment of New Secondary Members:  
Mr. Jose Luis Almazan of Cameron County;  
Mr. Jorge Gonzales of Hidalgo County;  
Ms. Gloria Morales of El Paso County; and  
Mr. Rudy Cantu of Willacy County**

Mr. Homer Cabello, Director of OCI, stated the Board approved at the last meeting the Colonia Resident Advisory Committee members. Staff is now requesting the addition of one primary member and four secondary members.

Motion made by Norberto Salinas and seconded by Vidal Gonzalez to approve the addition of Mr. Lionel Tamez of Willacy County to the Colonia Resident Advisory Committee as a primary member and new secondary members of Mr. Jose Luis Almazan of Cameron County; Mr. Jorge Gonzales of Hidalgo County; Ms. Gloria Morales of El Paso County; and Mr. Rudy Cantu of Willacy County.

Passed Unanimously

**c) Approval of Policy on Long Term Affordability and Safety Policy**

Mr. Tom Gouris stated SB322, has requirements regarding a long- term affordability policy to be adopted by the Board no later than November. The policy should say, “low and moderate incomes” and not “extremely low and very low incomes” as it is shown in the policy in the Board book. He asked that the Board make this change to the policy.

Motion made by C. Kent Conine and seconded by Norberto Salinas to approve the Long Term Affordability and Safety Policy and to publish the rules in the Texas Register.

Passed Unanimously

**d) Approval of Section 8 Payment Issues Standard for Housing Choice Vouchers in Accordance with 24 CFR Part. 982-503**

Mr. David Burrell stated the Section 8 Program is required by HUD to adopt a payment schedules standard. Staff is recommending payment standards at 100% of fair market rents, with one exception, that the Executive Director be given the authority to go up to 110% of fair market rents in extenuating circumstances.

Motion made by C. Kent Conine and seconded by Norberto Salinas to approve the Section 8 Payment issues standard for housing choice vouchers with the approval of Resolution No. 01-42.

Passed Unanimously

**e) Approval of Summary of Disaster Relief Recommendations Utilizing HOME Program Funds for the City of China and Donley County**

Ms. Pam Morris, Director of Housing Finance Programs, stated staff is recommending funding two Disaster Relief applications. One is from Donley County and the other from the Houston area that needs help caused by the flood. Staff is recommending for \$40,000 for Donley County and \$500,000 for the City of China with both getting administrative funds up to 4%.

Motion made by Norberto Salinas and seconded by Beth Anderson to approve the use of \$40,000 for Donley County and \$500,000 for City of China with 4% admin funds from the disaster relief fund.

Passed Unanimously

**f) Approval of FY 2001 HOME Program Awards for:**

Number	Name	Activity	Region	Score	Project \$'s	Units
20010096	Agua Dulce, City of	OCC	8B	246	\$220,000	4
20010106	Alice, City of	OCC	8B	256	\$493,440	10
20010088	Athens, City of	HBA	04	193	\$100,000	13
20010006	Atlanta, City of	OCC	04	228	\$149,874	3
20010142	Bay City Housing	OCC	06	266	\$495,000	9
20010033	Bellmead, City of	OCC	07	249	\$500,000	10
20010107	Belton, City of	OCC	07	244	\$495,000	9
20010221	Bertram, City of	OCC	07	202	\$ 69,769	2
20010108	Bishop, City of	OCC	8B	223	\$275,000	5

20010175	Bluebonnet Trails Comm. MHMR	TBRA	07	245	\$500,000	55
20010067	Bowie, City of	OCC	02	228	\$350,000	7
20010110	Brewster, County of	OCC	10	255	\$330,000	6
20010111	Brownwood, City of	OCC	02	254	\$ 55,000	1
20010109	Brownwood, City of	OCC	02	246	\$220,000	4
20010158	Caprock CAA, Inc.	OCC	01	260	\$500,000	10
20010137	CDC of Brownsville	HBA	8B	233	\$400,000	40
20010136	CDC of Brownsville	OCC	8B	208	\$ 85,289	5
20010152	CDC of Greater Brownsville	HBA	8B	238	\$300,000	30
20010217	Central Texas MHMR	TBRA	02	204	\$103,170	10
20010043	Charlotte, City of	OCC	8A	221	\$275,000	5
20010112	Coahoma, City of	OCC	09	249	\$495,000	9
20010123	Collin County MHMR	TBRA	03	209	\$500,000	34
20010185	Community Services Agcy. Of S. Texas Inc.	RHD	8B	189	TBD	TBD
20010064	Comal County Housing Authority	TBRA	8A	194	\$295,920	30
20010161	Comm. Partnership for Homeless	RHD	07	143	TBD	TBD
20010230	Commerce, City of	HBA	03	200	\$105,000	21
20010159	Commerce, City of	OCC	03	277	\$500,000	10
20010030	Crandall, City of	OCC	03	225	\$250,000	5
20010047	Culberson, County of	OCC	10	229	\$138,539	3
20010116	Daingerfield, City of	HBA	04	180	\$150,000	20
20010010	Daisetta, City of	OCC	06	218	\$300,000	6
20010201	Dallas Area Northstar Authority	TBRA	03	224	\$499,895	35
20010133	Dekalb, City of	HBA	04	229	\$112,500	15
20010131	Dekalb, City of	OCC	04	247	\$500,000	10
20010105	Driscoll, City of	OCC	8B	241	\$220,000	4
20010149	East Austin Economic Develop. Corp.	RHD	07	212	TBD	TBD
20010218	Encinal, City of	OCC	8B	258	\$235,331	5
20010042	Falls City, City of	OCC	8A	217	\$275,000	5
20010066	Farmersville, City of	OCC	03	245	\$200,000	4
20010068	Ferris, City of	OCC	03	266	\$300,000	6
20010189	Foundation Comm.	RHD	07	158	TBD	TBD
20010118	Gonzales, City of	OCC	8A	261	\$500,000	9
20010087	Greenville, City of	HBA	03	180	\$200,000	40
20010034	Greenville, City of	OCC	03	270	\$400,000	8
20010210	HA of The City of Del Rio	HBA	8B	180	\$500,000	50
20010104	Harker Heights, City of	OCC	07	252	\$330,000	6
20010138	Heart of Angleton, Inc.	OCC	06	250	\$495,000	9
20010103	Jim Wells, County of	OCC	8B	246	\$394,752	8
20010046	Jourdanton, City of	OCC	8A	215	\$275,000	5
20010039	Lamesa, City of	OCC	09	260	\$250,000	5
20010035	Lindale, City of	OCC	04	250	\$300,000	6
20010134	Lone Star, City of	OCC	04	231	\$250,000	5
20010214	Lubbock Regional MHMR Center	TBRA	01	220	\$480,769	50
20010036	Lufkin, City of	OCC	05	235	\$500,000	10
20010100	Mart, City of	OCC	07	243	\$220,000	4
20010141	Matador, City of	OCC	01	254	\$220,000	4
20010041	Mathis, City of	OCC	8B	223	\$495,000	9
20010132	Maud, City of	OCC	04	242	\$250,000	5

20010206	McKinney, City of	HBA	03	189	\$150,000	30
20010207	McKinney, City of	OCC	03	200	\$ 47,030	6
20010157	Meier Mortgage, Inc.	HBA	8A	213	\$300,000	40
20010156	Meier Mortgage, Inc.	HBA	10	229	\$200,000	20
20010143	Melissa, City of	OCC	03	239	\$220,000	4
20010197	Midland, City of	HBA	09	206	\$200,000	40
20010122	Midland, City of	OCC	09	239	\$148,730	6
20010060	Nacogdoches, City of	OCC	05	257	\$500,000	10
20010176	Nueces Co MHMR Community Center	TBRA	8A	274	\$500,000	55
20010097	Orange Grove, City of	OCC	8B	257	\$197,376	4
20010061	Palestine, City of	OCC	04	239	\$400,000	8
20010205	Patriot Mortgage	HBA	10	197	\$34,270	3
20010147	Petersburg, City of	OCC	01	223	\$275,000	5
20010242	Pharr, City of	HBA	8B	185	\$200,000	20
20010208	Pittsburg, City of	HBA	04	180	\$150,000	20
20010243	Rio Hondo, City of	HBA	8B	204	\$300,000	30
20010162	Robstown, City of	OCC	8B	223	\$250,000	10
20010044	Runge, City of	OCC	8A	207	\$ 97,876	3
20010079	Sabine Valley Center	TBRA	04	219	\$192,000	25
20010018	San Augustine, City of	OCC	05	224	\$300,000	6
20010244	San Benito, City of	HBA	8B	188	\$300,000	30
20010069	Sanger, City of	OCC	03	235	\$250,000	5
20010009	Shepherd, City of	OCC	05	204	\$300,000	6
20010146	Sinton, City of	OCC	8B	255	\$220,000	4
20010058	Slaton, City of	OCC	01	221	\$250,000	5
20010229	Special Health Resources	TBRA	04	214	\$200,000	25
20010151	St John Colony Neigh.	RHD	07	211	TBD	TBD
20010059	Stamford, City of	OCC	02	182	\$160,220	3
20010057	Sudan, City of	OCC	01	222	\$250,000	5
20010094	Tahoka, City of	OCC	01	218	\$171,989	3
20010082	Taylor Housing Au.	HBA	07	189	\$239,400	47
20010125	Temple Housing Au.	HBA	07	247	\$262,500	35
20010124	Temple Housing Au.	TBRA	07	253	\$246,810	19
20010007	Temple, City of	HBA	07	191	\$100,000	20
20010008	Temple, City of	OCC	07	225	\$416,000	10
20010013	Tenaha, City of	OCC	05	204	\$111,312	2
20010099	Texarkana, City of	OCC	04	238	\$495,000	9
20010001	Travis County Hsg. Au.	TBRA	07	193	\$500,000	51
20010232	Tri-County MHMR	TBRA	06	243	\$477,000	75
20010195	Tropical Texas Center for MHMR	TBRA	8B	189	\$480,000	96
20010098	Tye, City of	OCC	02	242	\$220,000	4
20010198	Walker-Montgomery CDC	HBA	06	238	\$ 37,500	5
20010048	Wharton, City of	OCC	06	251	\$495,000	9
20010015	Zavalla, City of	OCC	05	210	\$300,000	6

Ms. Pam Morris commended the HOME Program staff for their hard work on this funding round as they have been a very dedicated team. Every application was scored three times and the HOME Program Manager (Jeanne Arellano) and Director of Housing Finance Programs (Pam Morris) reviewed each application also. There are four activities that are allowed under the HOME Program. They are: (1) Homebuyer assistance; (2) Owner occupied rehab; (3) Tenant based rental assistance; and (4) Rental housing development. Each project will receive the 4% admin funds and 5% admin funds will go to CHDOs.

At this time additional Public Comment was taken.

Robert Chavira, Consultant

Mr. Chavira stated he represented Bluebonnet Trails MHMR and the City of Encinal. He stated Bluebonnet Trails is a non-profit organization that serves persons with disabilities. They serve an 8 county wide area, which includes Bastrop, Burnet, Caldwell, Fayette, Gonzales, Guadalupe, Lee and Williamson. This 8 county area was divided in the placing of regions and 6 counties fall in Region 7 and 2 counties fall in Region 8A. Bluebonnet Trails scored well in all 3 categories in which they submitted applications. TDHCA staff is making the recommendation to fund Bluebonnet Trails in Region 7 and Mr. Chavira asked that they be allowed to serve the other 2 counties also in Region 8A. He stated the City of Encinal has a very high population of elderly residents. They scored the second highest and are being only recommended for \$235,331 instead of the \$500,000 originally requested.

Pam Morris stated staff agreed with this error and would like to change the amount funded to the City of Encinal to \$500,000.

Mayor Mancha of Encinal

Mayor Mancha thanked the Board for the award.

Gilson Westbrook, St. John Colony

Mr. Westbrook represented St. John Colony Neighborhood Association and they are being recommended for funding under the rental housing and he wanted to know when they would receive their funds.

Motion made by C. Ken Conine and seconded by Norberto Salinas to approve the recommendations of staff as stated with the amendment of the contract dollar amount and number of units on the correction for the City of Encinal to \$500,000.  
Passed Unanimously

Mike Harms, Consultant

Mr. Harms requested to defer his time to Ms. Banks.

Jewel Banks, Executive Director, Angels Oaks

Ms. Banks stated their project was disqualified, as they did not submit a letter saying they did not owe the department an audit. They have found nothing in the guidelines or submission checklist asking for written documentation and she asked that their project be considered for funding.

Ms. Pam Morris of TDHCA stated that these disqualified applications would be discussed under agenda item 3(g).

**g) Possible Approval of Originally Disqualified Applications for the 2001 HOME Program Funding Cycle:**

Number	Name	Activity	Score	Region	Amount
20010150	Angelica Homes	RHD	187	03	\$ 999,950
20010223	Bartlett, City of	HBA	199	07	\$ 100,000
20010222	Bartlett, City of	0OCC	198	07	\$ 320,000
20010017	Broaddus, City of	OCC	182	05	\$ 300,000
20010113	China, City of	OCC	N/A	05	\$ 495,000
20010014	Columbus, City of	OCC	N/A	06	\$ 300,000
20010139	EAC of Gulf Coast	OCC	248	06	\$ 495,000
20010140	EAC Of Gulf Coast	OCC	258	06	\$ 495,000
20010212	Foundation for Hsg.	HBA	N/A	03	\$ 495,000
20010101	LaCoste, City of	OCC	N/A	8A	\$ 246,720
20010071	Life Rebuilders	RHD	N/A	03	\$1,000,000
20010072	Life Rebuilders	RHD	N/A	03	\$1,000,000
20010144	Merkel, City of	OCC	242	02	\$ 220,000
20010115	Nash, City of	HBA	181	04	\$ 150,000
20010114	Nash, City of	OCC	226	04	\$ 500,000
20010081	Plainview, City of	OCC	190	01	\$ 125,000
20010245	Statewide Cons.	CDC RHD	214	05	\$ 636,841
20010235	Willacy County	HBA	201	8B	\$ 300,000

Ms. Morris stated this item concerns the disqualified applications, the analysis and the recommendations being made to the board. The review of the applications began with staff looking at documentation. Items were listed in the threshold requirement list and those are the items that would disqualify a project from funding. Those

included incomplete forms, missing resolutions, etc. The next part of disqualifications, which stated that if items are not satisfied then the applicant is automatically disqualified. This was with regard to loan delinquencies with the department, any compliance issues that may be outstanding with the department, or any required past due audit, in addition to expenditure rate thresholds. In regard to the audit certification forms, it is the staff's recommendation after meeting with Executive that since the application did not specifically state an audit certification form was required that staff is recommending that those applicants be allowed a 14-day grace period to submit their audit certification form. If they submit the form and it disclosed that they were not subject to a single audit for the fiscal year in question, they will be allowed to be scored and reviewed. If the audit certification form indicates they were subject to a single audit, it will be delinquent as of the date of this recommendation.

Motion made by C. Kent Conine and seconded by Norberto Salinas to approve staff recommendations for the approval of the applications originally disqualified for the 2001 HOME Program Funding Cycle.  
Passed with 4 ayes as Ms. Anderson was out of the room

Mr. Conine stated for the record that Ms. Morris and her HOME Program management team along with Ms. Cedillo's help, have done a commendable job and the board appreciates their hard work on this item.

Tres Davis, Consultant

Mr. Davis thanked the board for their action on this item.

**(4) Presentation, Discussion and Possible Approval of Report from Finance Committee:**

**a) Approval of Resolution Regarding Extension of Certificate Purchase Period for Program 55A**

Mr. Byron Johnson, Director of SF Bond Finance, requested the approval to extend the certificate purchase period for Program 55A to December 28, 2002.

Motion made by C. Kent Conine and seconded by Norberto Salinas to approve the extension of the certificate purchase period for Program 55A until December 28, 2002 with approval of Resolution No. 01-40.  
Passed Unanimously

**b) Approval to Engage Bond Counsel of Vinson & Elkins for the Department in Response to the Request for Proposal and Bond Securities/Disclosure Counsel of McCall, Parkhurst for the Department in Response to the Request for Proposals**

Ms. Betty Marks, General Counsel, stated staff is requesting approval to engage bond counsel of Vinson & Elkins and engage McCall Parkhurst as bond securities/disclosure counsel for TDHCA. There were five requests for a copy of the RFP for bond counsel and the department received only two written proposals for both counsels by the close of the RFP period of September 10. Vinson & Elkins submitted a proposal and McCall Parkhurst also submitted a proposal.

Motion made by Vidal Gonzalez and seconded by C. Kent Conine to approve the selection of Vinson & Elkins for Bond Counsel and McCall Parkhurst for Bond Securities/Disclosure Counsel for TDHCA.  
Passed Unanimously

**c) Acceptance of Fourth Quarter Investment Report**

Mr. Bill Dally, CFO, stated this report is required to be presented to the board by the Public Funds Investment Act. It reflects the activity for this quarter that shows the carrying values and market values of TDHCA's investments. The portfolio decreased by \$37 million and is now at \$1.124 billion. The portfolio is composed of 70% mortgage backed securities; 22% in guaranteed investment contracts and investments agreements; 6% in repurchase agreements; and the remaining 2% in mutual funds. .

This was a report item and the board did not have to vote on a motion on this item.

**d) Approval of Participating Lenders for Bond Programs 57 and 57A**

Ms. Pam Morris stated the list in the board book is the list of lenders that submitted applications for participation in Bond Program 57 and 57A. All lenders have been approved internally. The master servicer, Countrywide Mortgage, is reviewing the list also.

Motion made by C. Kent Conine and seconded by Vidal Gonzalez to approve the list of participating lenders for Bond Programs 57 and 57A.  
Passed Unanimously

- e) **Approval of One or More Inducement Resolutions Declaring Intent to Issue Multifamily Housing Mortgage Revenue Bonds for Projects Throughout the State of Texas and Authorizing the Filing of Related Applications for the Allocation of Private Activity Bonds with the Texas Bond Review Board for Program Year 2002 and Other Related Matters for Priority 1 Projects:**  
**Resolution No. 01-35:**  
#2002-001, Gates of Galilee Apartments, Houston, not to exceed \$15,000,000;  
#2002-004, Gates of Eden, Houston, not to exceed \$15,000,000;  
#2002-005, Residences of Pemberton Hill, Dallas, not to exceed \$6,500,000;  
#2002-006, Parkside Terrace Apartments, Houston, not to exceed \$9,000,000;  
#2002-014, West Virginia Apartments, Dallas, not to exceed \$10,000,000;  
#2002-028, Wylie Senior Apartments, Wylie, not to exceed \$8,436,000;  
#2002-029, Mesquite Northwest Drive Senior Apartments, Mesquite, not to exceed \$11,750,000;  
#2002-048; Mountain Creek Apartments, Dallas, not to exceed \$15,000,000;  
#2002-052, Stonebrook Courtyards, McKinney, not to exceed \$15,000,000;  
#2002-053, Clarkridge Villas, Dallas, not to exceed \$15,000,000;  
#2002-054, McKinney Estates, McKinney, not to exceed \$15,000,000;  
#2002-055, Wheatland Villas, Dallas, not to exceed \$15,000,000;  
#2002-056, Stonebrook Villas, McKinney, not to exceed \$15,000,000;  
#2002-057, Hickory Trace, Dallas, not to exceed \$15,000,000;  
#2002-062, Madison Pointe Apartments, Dallas, not to exceed \$12,500,000;  
#2002-063, Park Side Apartments, Arlington, not to exceed \$10,000,000;  
#2002-069, Birnam Woods Apartments, Spring, not to exceed \$11,500,00;  
#2002-071, Veterans Memorial, Houston, not to exceed \$14,730,000;  
#2002-073, Fairmont Parkway, LaPorte, not to exceed \$15,000,000;  
#2002-074, Arkansas Lane, Grand Prairie, not to exceed \$15,000,000;  
#2002-076, The Richmond, Richmond, not to exceed \$15,000,000;  
#2002-077, Harbour Pointe, Leander, not to exceed \$14,500,000;  
#2002-078, Newport Downs, Leander, not to exceed \$14,500,000;  
#2002-079, Regency Arms, Cedar Park, not to exceed \$14,100,000;  
#2002-080, Heatherbrook, Pflugerville, not to exceed \$14,500,000;  
**And for Priority 2 Projects:**  
#2002-003, Smithstone Place, Houston, not to exceed \$15,000,000;  
#2002-007, The Enclave @ West Airport, Houston, not to exceed \$11,000,000;  
#2002-008, Park Row Apartments II, Houston, not to exceed \$15,000,000;  
#2002-009, Morton Apartments, Houston, not to exceed \$15,000,000;  
#2002-010, Preakness Apartments, Dallas, not to exceed \$15,000,000;  
#2002-011, North Vista Apartments, Houston, not to exceed \$15,000,000;  
#2002-012, Greenland Apartments, Houston, not to exceed \$12,500,000;  
#2002-013, John T. White II Apartments, Ft. Worth, not to exceed \$15,000,000;  
#2002-015, Park Row I Apartments, Houston, not to exceed \$12,500,000;  
#2002-016, John T. White I Apartments, Ft. Worth, not to exceed \$14,000,000;  
#2002-017, Groescke Apartments, Houston, not to exceed \$14,000,000;  
#2002-018, Deerbrook Two Apartments, Houston, not to exceed \$15,000,000;  
#2002-019, Westpark Apartments, Houston, not to exceed \$12,500,000;  
#2002-020, Stuebner II Apartments, Houston, not to exceed \$15,000,000;  
#2002-021, Stuebner I Apartments, Houston, not to exceed \$15,000,000;  
#2002-022, Deerbrook One Apartments, Houston, Texas, not to exceed \$15,000,000;  
#2002-023, Canterbury Trails Apartments, Austin, not to exceed \$14,500,000;  
#2002-024, William Cannon II Apartments, Austin, not to exceed \$15,000,000;  
#2002-025, William Cannon I Apartments, Austin, not to exceed \$7,500,000;  
#2002-026, Walters Apartments, Houston, not to exceed \$15,000,000;  
#2002-027, Blue Ash Apartments, Houston, not to exceed \$12,500,000;  
#2002-033, Orchard Apartments, Houston, not to exceed \$15,000,000;  
#2002-034, The Willow Park Apartments, Houston, not to exceed \$15,000,000;

**#2002-035, Oak Estates Apartments, Houston, not to exceed \$15,000,000;**  
**#2002-036, Ash Tree Apartments, LaPorte, not to exceed \$15,000,000;**  
**#2002-037, Bay River Apartments, Baytown, not to exceed \$15,000,000;**  
**#2002-038, Bay Park Apartments, Houston, not to exceed \$15,000,000;**  
**#2002-039, The Chestnut Park Apartments, Houston, not to exceed \$15,000,000;**  
**#2002-040, The Elm Park Apartments, Houston, not to exceed \$15,000,000;**  
**#2002-041, Pepper Tree Apartments, Houston, not to exceed \$15,000,000;**  
**#2002-042, Redwood Apartments, not to exceed \$15,000,000;**  
**#2002-043, Teakwood Apartments, not to exceed \$15,000,000;**  
**#2002-044, Walnut Crest Apartments, Rosenberg, not to exceed \$15,000,000;**  
**#2002-045, Woodway Village Apartments, Austin, not to exceed \$9,100,000;**  
**#2002-046, Sundown Village Apartments, Houston, not to exceed \$9,250,000;**  
**#2002-047, Toulouse Villas, Houston, not to exceed \$12,750,000;**  
**#2002-058, Cutten Forest Apartments, Houston, not to exceed \$12,500,000;**  
**#2002-059, Cutten Woods Apartments, Houston, not to exceed \$14,000,000;**  
**#2002-060, Katy-Flewellen Apartments, Katy, not to exceed \$15,000,000;**  
**#2002-061, Reading Road Apartments, Rosenberg, not to exceed \$14,000,000;**  
**#2002-064, Main Street Apartments, Baytown, not to exceed \$12,700,000;**  
**#2002-065, City Place Apartments, Humble, not to exceed \$8,500,000;**  
**#2002-066, Green Crest Apartments, Houston, not to exceed \$12,450,000;**  
**#2002-067, Central Park Apartments, Cedar Park, not to exceed \$14,000,000;**  
**#2002-068, Branch Creek Apartments, Houston, not to exceed \$12,500,000;**  
**#2002-070, Gray Ridge Apartments, Houston, not to exceed \$12,500,000;**  
**#2002-072, The Mayfield, Arlington, not to exceed \$15,000,000;**  
**#2002-075, Mark IV, Ft. Worth, not to exceed \$15,000,000**

**Resolution No. 01-36:**

**#2002-051, Cedar Park Ranch Phase I, Cedar Park, not to exceed \$8,500,000**

Mr. Robert Onion, Director of Multifamily Finance, stated the Department received 80 applications for the Private Activity Bond Program; 3 of these were withdrawn and of the 77 remaining, 74 met the guideline criteria. These projects are listed in Resolutions Nos. 01-35 and 01-36.

**Resolution No. 01-37:**

**#2002-050, Cedar Park Ranch Phase II, Cedar Park, amount of \$7,200,000**

**Resolution No. 01-38:**

**#2002-049, Eagle Glenn at Kenswick, Humble, not to exceed \$13,500,000**

Mr. Onion stated that under Resolutions Nos. 01-37 and 01-38, the applicant has proposed a structure with an interest rate of 6.35% at 40 years, which represents a HUD 221(d)(4) transaction. The reason these two projects are not included with the others above is staff did not consider that interest rate under a 221(d)(4) due to the length of time it takes to close that transaction and the amount of time that the applicant has from the time of reservation to get all documentation in is only 120 days. Staff is however willing to accept these two resolutions.

**Resolution No. 01-39:**

**#2002-002, Park Meadows Apartments, Boerne, not to exceed \$6,500,000**

Mr. Onion stated this project did not meet the assumption guidelines based upon the amount of deferral of developer's fees. TDHCA's developer's fee cutoff point was at no more than 80% deferred developer's fee and this one has a 92% deferred developer's fee.

Steve Poppoon, Project Coordinator for Cedar Park Ranch I and II and Eagle Glenn at Kenswick

Mr. Poppoon stated HUD has underwritten the projects and they are ready to proceed.

Motion made by C. Kent Conine and seconded by Vidal Gonzalez to approve the Resolutions Nos. 01-35, 01-36, 03-37, 01-38 and 01-39 for the multifamily bond transactions.

Passed Unanimously

**(5) Presentation, Discussion and Possible Approval of Report from Audit Committee:**

**a) Approval of FY 2002 Internal Audit Plan**

Mr. David Gaines, Director of Internal Auditing, stated the Internal Audit Division solicited input from the board

members, management and external auditors in the development of this plan. He stated their first planned project is to access whether processes are in place to facilitate the communication of board policy to staff and if that policy is reduced to operating policies and procedures and to assess whether there are processes in place to ensure that board responsibilities are identified and communicated to the Board members in a timely, accurate, complete and useful manner.

The next project is a review of the project management framework being used by management in the development of the department wide database. Another project is a LIHTC project and the objectives are to compare project deliverables associated with tax credits that have been awarded by the board to the actual deliverables that have been provided. The objectives of a second LIHTC project will be to assess whether management has established adequate controls to ensure successful implementation of SB 322 as it relates to LIHTC. Mr. Gaines said they would also do a payroll audit. The remaining projects are ongoing activities such as tracking, monitoring, and reporting to the board on prior audit issues, etc.

Motion made by C. Kent Conine and seconded by Vidal Gonzalez to approve the FY 2002 Internal Audit Plan.  
Passed Unanimously

Ms. Anderson asked for period reviews to be added to this plan for the committee's review in future meetings.

**b) Approval of Amended Internal Audit Charter**

Mr. Gaines stated that the Internal Audit Charter provides for the purpose, authority and responsibility of the internal auditing function. In response to audit information requests he would like to change the "24 hours" as stated in the charter to "48 hours" for a response.

Motion made by C. Kent Conine and seconded by Beth Anderson to approve the amended internal audit charter.  
Passed Unanimously

**c) Discussion on 2001 Annual Internal Auditing Report**

This was a report item only and Mr. Gaines stated the Texas Internal Auditing Act requires the report. The State Auditors Office prescribes the format and the report is distributed to the Office of the Governor, the Legislative Budget Board, Sunset Advisory Commission and the State Auditors Office.

Mr. Conine asked that Mr. Gaines furnish each board member a copy of the revised organizational chart with a list of those employees that are in each of the boxes on this chart.

**(6) Presentation, Discussion and Possible Approval of Election of Vice-Chair and Secretary of the Board**

Mr. Jones had a suggestion that the current secretary be elected again.

Motion made by C. Kent Conine and seconded by Vidal Gonzalez to appoint Delores Groneck as Secretary of the Board.  
Passed Unanimously

Motion made by Beth Anderson and seconded by Vidal Gonzalez to appoint C. Kent Conine as Vice-Chair of the Board.  
Passed Unanimously

**(7) Presentation, Discussion and Possible Approval of Election of Board Representative to the Concentration Policy Ad Hoc Committee (Advisory Group)**

Motion made by Beth Anderson and seconded by C. Kent Conine to ratify Mr. Norberto Salinas as the Board Representative to the Concentration Policy Ad Hoc Committee.  
Passed Unanimously

**(8) Presentation and Discussion of Appointment by Board Chairman of Members to Committees**

Mr. Jones announced the committee appointments had been made and asked that the board secretary furnish everyone with a list of what each committee is responsible for, etc.

Mr. Conine stated that the board is in the application acceptance stage at this time. The Executive Director Search Committee should meet and he prefers a double interview process. The first interview to include around



6 to 8 applicants and then the second interview would get the selection down to 2 to 4 applicants. From this process the committee could make a recommendation to the board. Any board member is welcome to have input or listen to the various interviews if they so desire. Also, the board hopes to select a permanent executive director by the end of 2001.

Mr. Jones advised the committee to make sure they do not have a quorum of board members in attendance, as that would be considered a board meeting.

**(9) Presentation, Discussion and Possible Approval of Selection of Appointment of Acting Executive Director of Texas Department of Housing and Community Affairs and Approval Of Resolution Regarding Signature Authority**

Mr. Jones stated the board accepted the resignation of Ms. Daisy Stiner and stated that the Deputy Executive Director is willing to serve as the Acting Executive Director.

Motion made by Beth Anderson and seconded by Vidal Gonzalez to appoint Ms. Ruth Cedillo as the acting executive director with the approval of Resolution No. 01-43. Mr. Conine added an amendment for her to be paid a salary in the amount of the previous executive director.

Passed Unanimously

Motion made by C. Kent Conine and seconded by Norberto Salinas to approve Resolution No. 01-44 for signature authority.

Passed Unanimously

## **REPORT ITEMS**

### Executive Directors Report

#### Public Hearings (HRC)

Ms. Cedillo stated that department has held 12 public hearings regarding the various documents that the department must submit, including the LIHTC QAP, the TDHCA uniform application for housing and the 2002 Regional Allocation Formula. Also discussed is the 2002 Consolidated One Year Action Plan that includes the HOME Program, the CDBG Program, the Emergency Shelter Grant Program, and Housing Opportunities for Persons with Aids. There will be 3 more public hearings held in Canyon, Tyler and El Paso. The comment period for the QAP is between October 5 and November 4 and the comment period for the one-year action is between November 2 and December 3, 2001.

## **ADJOURN**

Motion made by Vidal Gonzalez and seconded by C. Kent Conine to adjourn the meeting.

Passed Unanimously

The meeting adjourned at 1:30 p.m.

Respectfully submitted,

Delores Groneck  
Board Secretary

Bdminoct17/dg

## *EXECUTIVE SESSION*

### **EXECUTIVE SESSION**

Personnel Matters

Personnel Matters on Executive Director Position and Applications

Litigation and Anticipated Litigation (Potential or Threatened  
under Sec. 551.071 and 551.103, Texas Government Code  
Litigation Exception)

Consultation with Attorney Pursuant to Sec. 551.071(2), Texas  
Government Code

Consultation with Attorneys Concerning Litigation on  
Cause No. GN102058, Kenneth H. Mitchell, The Grand  
Texan, Ltd., and One Buena Vista, Ltd. v. Texas  
Department of Housing and Community Affairs, in the 53<sup>rd</sup>  
District Court of Travis County

The Board may discuss any item listed on this agenda in Executive Session

### **OPEN SESSION**

Action in Open Session on Items Discussed in Executive Session

AGENDA ITEM NO. 2(A)

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

<b>MEMORANDUM</b>
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TO: TDHCA Board Members

CC: Ruth Cedillo, Acting Executive Director  
David Burrell, Director of Housing Programs  
Executive Award and Review Advisory Committee

FROM: Charles E. Nwaneri, Acting Manager, LIHTC

DATE: November 6, 2001

**SUBJECT: Recommended Priority of Allocation of Tax Credits to the 2001 Waiting List Developments**

In accordance with the review and approval by the Executive Award and Review Advisory Committee, we are recommending that the 2001 Waiting List be prioritized in the descending order listed below. A total of \$531,982 is available in tax credits to be allocated to the Waiting List developments. The regional allocation formula, development set-asides, development scores and the underwriting recommendations were factors considered in developing the priority list. The salient information to support this priority list is also provided below.

Priority #	TDHCA #	Project Name	Service Region.	Recommended Credit Amt.	Total Units	LIHTC Units	Pts. Awd	Household Type
1	01086	Mission Oaks	8B	\$179,350	32	32	52	Family
*2A	01055	Laredo Viejo Apts.	8B	\$770,447	108	91	80	Family
*2B	01143	Laredo Vista	8B	\$888,406	160	136	68	Family
3	01028	Spindletop Estates	5	\$704,340	128	108	75	Elderly
4	01039	Park Meadows	8A	\$408,647	76	76	66	Elderly
5	01167	Bexar Creek	8A	\$548,121	72	61	71	Family
6	01095	Pueblo Montana	10	\$175,557	36	36	72	Family
7	01012	Winchester Lake	7	\$477,705	120	120	73	Family
	01098	Burgundy Palms Apt	10	N/A	92	92	69	Family
	01036	Ennis Seniors Estates	3	N/A	248	248	82	Elderly
	01007	Grand Texas Seniors	3	N/A	230	54	77	Elderly

\* These two developments are mutually exclusive. Therefore an allocation to one will exclude the other.

Service Region	(a) Allocation Formula	(b) Board Approve Amt	(c) Forward Commitment	(d) Total Allocation	(e) Difference (d-a)
1	\$1,142,671	\$1,054,496		\$1,054,496	-\$88,175
2	\$731,638	\$929,597		\$929,597	\$197,959
3	\$4,506,262	\$4,703,920	\$717,690	\$5,421,610	\$915,348
4	\$1,672,371	\$1,846,086		\$1,846,086	\$173,715
5	\$1,276,684	\$1,230,099		\$1,230,099	-\$46,585
6	\$5,494,953	\$5,858,772	\$573,256	\$6,432,028	\$937,075

7	<b>\$2,197,370</b>	\$1,999,259	\$1,497,778	<b>\$3,497,037</b>	<b>\$1,299,667</b>
8A	<b>\$3,068,639</b>	\$3,156,329		<b>\$3,156,329</b>	<b>\$87,690</b>
8B	<b>\$5,488,492</b>	\$4,314,427	\$534,892	<b>\$4,849,319</b>	<b>-\$639,173</b>
9	<b>\$807,218</b>	\$1,030,497		<b>\$1,030,497</b>	<b>\$223,279</b>
10	<b>\$1,603,554</b>	\$1,840,421		<b>\$1,840,421</b>	<b>\$236,867</b>

**SALIENT INFORMATION FOR PRIORITIZATION OF 2001 WAITING LIST**

1. 01086-Mission Oaks-Refugio
  - Region 8B
  - Region 8B is under funded by \$639,173.
  - Rural Set-Aside.
  - Score is 52.
  
- 2A. 01055-Laredo Viejo Apts.-Laredo
  - Region 8B
  - Region 8B is under funded by \$639,173.
  - General Set-Aside.
  - Score is 80.
  
- 2B. 01143-Laredo Vista Apts.-Laredo
  - Region 8B
  - Region 8B is under funded by \$639,173.
  - General Set-Aside.
  - Score is 68.
  
3. 01028-Spindletop Estates-Beaumont
  - Region 5
  - Region 5 is under funded by \$46,585.
  - Elderly Set-Aside.
  - Score is 75.
  
4. 01039-Park Meadows Apts.-Boerne
  - Region 8A
  - Region 8A is over funded by \$87,690.
  - Elderly Set-Aside.
  - Score is 66.
  
5. 01167-Bexar Creek Apts.-San Antonio
  - Region 8A
  - Region 8A is over funded by \$87,690.
  - General Set-Aside.
  - Score is 71.
  
6. 01095.-Pueblo Montana –El Paso
  - Region 10
  - Region 10 is over funded by \$236,867.
  - General Set-Aside.
  - Score is 73.
  
7. 01012-Winchester Lake-Bastrop
  - Region 7
  - Region 7 is over funded by \$1,299,667
  - General Set-Aside.
  - Score is 72.
  
- 01098-Burgundy Palms Apts.-El Paso

- Region 10
- Region 10 is over funded by \$236,867.
- General Set-Aside
- Score is 69
- This development was not recommended because it is located entirely within the 100-year floodplain and the applicant did not provide a sufficient mitigation plan.

01036-Ennis Seniors Estates-Ennis

- Region 3
- Region 3 is over funded by \$915,348.
- Non-Profit Set-Aside
- Score is 82
- This development was not recommended because of insufficient demand for affordable units in the market area.

01007-Grand Texas Seniors-McKinney

- Region 3
- Region 3 is over funded by \$915,348.
- Elderly Set-Aside
- Score is 77
- This development was declined for lack of stabilized status in February 2001 as determined by the Market Analyst.

Approved by Executive Award and Review Advisory Committee

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Ruth Cedillo, Chair

Date

AGENDA ITEM NO. 2(B)



**LOW INCOME HOUSING TAX CREDIT PROGRAM  
2001 LIHTC/TAX EXEMPT BOND DEVELOPMENT PROFILE AND BOARD SUMMARY**

Texas Department of Housing and Community Affairs

Development Name: **Hillside Apartments**

TDHCA#: 01406

**DEVELOPMENT AND OWNER INFORMATION**

Development Location: Dallas QCT: Y DDA: N TTC: N  
 Development Owner: TX Hillside Apartments, L.P.  
 General Partner(s): TX Hillside Development Corp., Brian Potashnik, 100%  
 Construction Category: New  
 Set-Aside Category: Tax Exempt Bond Bond Issuer: TDHCA  
 Development Type: Family

**Annual Tax Credit Allocation Calculation**

Applicant Request: \$889,635 Eligible Basis Amt: 857,198 Equity/Gap Amt.: \$837,364  
**Annual Tax Credit Allocation Recommendation: 837,364**  
 Total Tax Credit Allocation Over Ten Years: \$8,373,640

**PROPERTY INFORMATION**

**Unit and Building Information**

Total Units: 236 LIHTC Units: 236 % of LIHTC Units: 100%  
 Gross Square Footage: 249,280  
 Average Square Footage/Unit: 1,033  
 Number of Buildings: 13  
 Currently Occupied: N

**Development Cost**

Total Cost: 19,696,967 Total Cost/Net Rentable Sq. Ft.: \$80.79

**Income and Expenses**

Effective Gross Income:<sup>1</sup> \$1,919,146 Ttl. Expenses: \$824,099 Net Operating Inc.: \$1,095,046  
 Estimated 1st Year DCR: 1.07

**DEVELOPMENT TEAM**

Consultant: Not Utilized Manager: Southwest Housing Management  
 Attorney: True & Shackelford Architect: BGO Architects  
 Accountant: Rezick, Fedder & Silverman Engineer: Pond Robinson & Assoc.  
 Market Analyst: Butler Burgher Lender: Charter MAC  
 Contractor: Affordable Housing Construction Syndicator: Related Capital Co.

**PUBLIC COMMENT<sup>2</sup>**

From Citizens:	From Legislators or Local Officials:
# in Support: NC # in Opposition: NC	Sen. Royce West, District 23 - NC Rep. Helen Giddings, District 109 - NC Mayor Ron Kirk - NC Douglas A. Dykman, Interim Director, City of Dallas Housing Dept. This proposed development will assist in fulfilling a need for additional quality affordable rental housing as evidenced in the City of Dallas Consolidated Plan.

**CONDITION(S) TO COMMITMENT**

1. Per §50.7(h)(6) of the Qualified Allocation Plan and Rules, all Tax Exempt Bond Project Applications “must provide an executed agreement with a qualified service provider for the provision of special supportive services that would otherwise not be available for the tenants. The provision of such services will be included in the Declaration of Land Use Restrictive Covenants (“LURA”).”
2. Receipt, review and acceptance of a service contract and fee schedule for proposed supportive services.
3. Receipt, review and acceptance of approval of rezoning of Tracts 1 and 2 from CS-D-1 to MF 1(A), allowing multifamily construction.
4. Receipt, review and acceptance of documentation verifying the resolution of issueds including: three liens by the City of Dallas, a promissory note of \$131,928.69, a Federal Tax Lien of \$9,922.92 and a Notice of Lis Pendens styled City of Dallas vs. Spegil Village, Inc. involving title to Tract 3
5. Receipt, review and acceptance of revised plans that reflect the centralized water heating system or a re-evaluation and possible reduction of the recommended bond amount.

**AD HOC TAX CREDIT COMMITTEE DETERMINATIONS**

Approved Tax Credit Amount: \_\_\_\_\_

Date of Determination: \_\_\_\_\_

**DEVELOPMENT’S SELECTION BY PROGRAM MANAGER IS BASED ON:**

Score    Utilization of Set-Aside    Geographic Distrib.    Tax Exempt Bond.    Housing Type

Other Comments including discretionary factors (if applicable). This project qualifies as a Tax Exempt Financed Project per the requirements of Sec. 50.7(h) of the 2001 QAP. The application has met the Threshold Criteria and has demonstrated consistency with the local consolidated plan. The Applicant has no outstanding material non-compliance issues with respect to its development experience.

\_\_\_\_\_  
Charles E. Nwaneri, Acting Program Manager

\_\_\_\_\_  
Date

\_\_\_\_\_  
David Burrell, Director of Housing Programs   Date

**DEVELOPMENT’S SELECTION BY EXECUTIVE DIRECTOR IS BASED ON:**

Score    Utilization of Set-Aside    Geographic Distrib.    Tax Exempt Bond    Housing Type

Other Comments including discretionary factors (if applicable). \_\_\_\_\_

\_\_\_\_\_  
Ruth Cedillo, Acting Executive Director

\_\_\_\_\_  
Date

**LIHTC Ad Hoc Committee’s Approval and description of discretionary factors (if applicable).**

\_\_\_\_\_  
\_\_\_\_\_

**TDHCA Board of Director’s Approval and description of discretionary factors (if applicable).**

\_\_\_\_\_  
\_\_\_\_\_

Committee Chairperson Signature: \_\_\_\_\_

Michael E. Jones, Attorney At Law

\_\_\_\_\_  
Date



**LOW INCOME HOUSING TAX CREDIT PROGRAM**  
**2001 LIHTC/TAX EXEMPT BOND DEVELOPMENT PROFILE AND BOARD SUMMARY**

Texas Department of Housing and Community Affairs

Development Name: **Oak Hollow**

TDHCA#: 01435

**DEVELOPMENT AND OWNER INFORMATION**

Development Location: Dallas QCT: Y DDA: N TTC: N  
 Development Owner: Oak Hollow Housing, L.P.  
 General Partner(s): Oak Hollow Housing Development Corp., Brian Potashnik, 100%  
 Construction Category: New  
 Set-Aside Category: Tax Exempt Bond Bond Issuer: TDHCA  
 Development Type: Family

**Annual Tax Credit Allocation Calculation**

Applicant Request: \$597,723 Eligible Basis Amt: 588,062 Equity/Gap Amt.: \$682,488  
**Annual Tax Credit Allocation Recommendation: 588,062**  
 Total Tax Credit Allocation Over Ten Years: \$5,880,620

**PROPERTY INFORMATION**

**Unit and Building Information**

Total Units: 153 LIHTC Units: 153 % of LIHTC Units: 100%  
 Gross Square Footage: 160,433  
 Average Square Footage/Unit: 1,026  
 Number of Buildings: 2  
 Currently Occupied: N

**Development Cost**

Total Cost: 13,942,470 Total Cost/Net Rentable Sq. Ft.: \$88.78

**Income and Expenses**

Effective Gross Income:<sup>1</sup> \$1,250,815 Ttl. Expenses: \$543,920 Net Operating Inc.: \$706,894  
 Estimated 1st Year DCR: 1.07

**DEVELOPMENT TEAM**

Consultant: Not Utilized Manager: Southwest Housing Management  
 Attorney: True & Shackelford Architect: BGO Architects  
 Accountant: Rezick, Fedder & Silverman Engineer: Pond Robinson & Assoc.  
 Market Analyst: Butler Burgher Lender: Charter MAC Municipal Mortgage  
 Contractor: Affordable Housing Construction Syndicator: Related Capital Co.

**PUBLIC COMMENT<sup>2</sup>**

From Citizens:	From Legislators or Local Officials:
# in Support: NC # in Opposition: NC	Sen. Royce West, District 23 - NC Rep. Helen Giddings, District 109 - NC Mayor Ronald Kirk - NC Douglas A. Dykman, Interim Director, City of Dallas Housing Department This proposed development would assist in fulfilling a need for additional quality affordable rental housing as evidenced in the City of Dallas Consolidated Plan.



**CONDITION(S) TO COMMITMENT**

- 6. Per §50.7(h)(6) of the Qualified Allocation Plan and Rules, all Tax Exempt Bond Project Applications “must provide an executed agreement with a qualified service provider for the provision of special supportive services that would otherwise not be available for the tenants. The provision of such services will be included in the Declaration of Land Use Restrictive Covenants (“LURA”).”
- 7. Receipt, review and acceptance of a service contract and fee schedule for proposed supportive services.
- 8. Receipt, review and acceptance of a final reconciliation of the costs associated with the resolution of the outstanding liens and encumbrances and a review of the gap of funds needed and potential reduction in the recommended tax credit allocation may be warranted if the total cost to the Applicant for such resolution is less than \$600,000.
- 9. Receipt, review and acceptance of revised plans that reflect the centralized water heating system or a re-evaluation and possible reduction of the recommended bond amount.

**AD HOC TAX CREDIT COMMITTEE DETERMINATIONS**

Approved Tax Credit Amount: \_\_\_\_\_ Date of Determination: \_\_\_\_\_

**DEVELOPMENT’S SELECTION BY PROGRAM MANAGER IS BASED ON:**

Score  Utilization of Set-Aside  Geographic Distrib.  Tax Exempt Bond.  Housing Type

Other Comments including discretionary factors (if applicable). This project qualifies as a Tax Exempt Financed Project per the requirements of Sec. 50.7(h) of the 2001 QAP. The application has met the Threshold Criteria and has demonstrated consistency with the local consolidated plan. The Applicant has no outstanding material non-compliance issues with respect to its development experience.

\_\_\_\_\_  
Charles E. Nwaneri, Acting Program Manager

\_\_\_\_\_  
Date

\_\_\_\_\_  
David Burrell, Director of Housing Programs

\_\_\_\_\_  
Date

**DEVELOPMENT’S SELECTION BY EXECUTIVE DIRECTOR IS BASED ON:**

Score  Utilization of Set-Aside  Geographic Distrib.  Tax Exempt Bond  Housing Type

Other Comments including discretionary factors (if applicable). \_\_\_\_\_

\_\_\_\_\_  
Ruth Cedillo, Acting Executive Director

\_\_\_\_\_  
Date

**LIHTC Ad Hoc Committee’s Approval and description of discretionary factors (if applicable).**

**TDHCA Board of Director’s Approval and description of discretionary factors (if applicable).**

Committee Chairperson Signature: \_\_\_\_\_

Michael E. Jones, Attorney At Law

\_\_\_\_\_  
Date



**LOW INCOME HOUSING TAX CREDIT PROGRAM**  
**2001 LIHTC/TAX EXEMPT BOND DEVELOPMENT PROFILE AND BOARD SUMMARY**

Texas Department of Housing and Community Affairs

Development Name: **Buena Vista Seniors Community**

TDHCA#: 01442

**DEVELOPMENT AND OWNER INFORMATION**

Development Location: Cleburne QCT: Y DDA: N TTC: N  
 Development Owner: One Buena Vista, Ltd.  
 General Partner(s): Cleburne Buena Vista, Inc., Kenneth H. Mitchell, 100%  
 Construction Category: New  
 Set-Aside Category: Tax Exempt Bond Bond Issuer: North Central TX Housing FC  
 Development Type: Elderly

**Annual Tax Credit Allocation Calculation**

Applicant Request: \$739,295 Eligible Basis Amt: 750,851 Equity/Gap Amt.: \$980,366  
**Annual Tax Credit Allocation Recommendation: 739,295**  
 Total Tax Credit Allocation Over Ten Years: \$7,392,950

**PROPERTY INFORMATION**

**Unit and Building Information**

Total Units: 230 LIHTC Units: 230 % of LIHTC Units: 100%  
 Gross Square Footage: 262,990  
 Average Square Footage/Unit: 892  
 Number of Buildings: 3  
 Currently Occupied: N

**Development Cost**

Total Cost: 17,639,002 Total Cost/Net Rentable Sq. Ft.: \$85.93

**Income and Expenses**

Effective Gross Income:<sup>1</sup> \$1,608,390 Ttl. Expenses: \$818,078 Net Operating Inc.: \$790,312  
 Estimated 1st Year DCR: 1.10

**DEVELOPMENT TEAM**

Consultant: Not Utilized	Manager: Capstone Property Management
Attorney: Cantey and Hanger	Architect: Gailer, Tolson and French
Accountant: KPMG Peat Marwick	Engineer: Hannon Engineering, Inc.
Market Analyst: Ipser & Associates, Inc.	Lender: Sun America, Inc.
Contractor: ICI Construction	Syndicator: Sun America Affordable Housing Partners, Inc.

**PUBLIC COMMENT<sup>2</sup>**

From Citizens:	From Legislators or Local Officials:
# in Support: NC	Sen. David Sibley, District 22 - NC
# in Opposition: NC	Rep. Arlene Wohlgenuth, District 58 - S
	Mayor Thomas C. Hazlewood -
	Adam Miles, Assistant to the City Manager This development fulfills a need for additional affordable rental housing for senior citizens based upon the Annual Housing Plan and the Five Year Housing Plan.

**CONDITION(S) TO COMMITMENT**

- 10. Per §50.7(h)(6) of the Qualified Allocation Plan and Rules, all Tax Exempt Bond Project Applications “must provide an executed agreement with a qualified service provider for the provision of special supportive services that would otherwise not be available for the tenants. The provision of such services will be included in the Declaration of Land Use Restrictive Covenants (“LURA”).”
- 11. Board recognition and acceptance of the uncertainty of demand and a likely extended two-year lease-up period.
- 12. Receipt, review, and acceptance of a reconciliation of the square footage of all common areas and corridors broken down by type of space, and a review and certification by a CPA concerning the eligibility of the space regarded as commercial. Should such a certification reduce the eligible site work costs, a re-evaluation of the amount of tax credit recommendation should be conducted.
- 13. Receipt, review, and acceptance of evidence of a Section 404 permit if the streams or adjoining floodplains are to be modified when the property is developed.
- 14. Receipt, review, and acceptance of a pay-in schedule for LIHTC syndication proceeds.

**AD HOC TAX CREDIT COMMITTEE DETERMINATIONS**

Approved Tax Credit Amount: \_\_\_\_\_

Date of Determination: \_\_\_\_\_

**DEVELOPMENT’S SELECTION BY PROGRAM MANAGER IS BASED ON:**

Score    Utilization of Set-Aside    Geographic Distrib.    Tax Exempt Bond.    Housing Type

Other Comments including discretionary factors (if applicable). This project qualifies as a Tax Exempt Financed Project per the requirements of Sec. 50.7(h) of the 2001 QAP. The application has met the Threshold Criteria and has demonstrated consistency with the local consolidated plan. The Applicant has no outstanding material non-compliance issues with respect to its development experience.

\_\_\_\_\_  
Charles E. Nwaneri, Acting Program Manager

\_\_\_\_\_  
Date

\_\_\_\_\_  
David Burrell, Director of Housing Programs   Date

**DEVELOPMENT’S SELECTION BY EXECUTIVE DIRECTOR IS BASED ON:**

Score    Utilization of Set-Aside    Geographic Distrib.    Tax Exempt Bond    Housing Type

Other Comments including discretionary factors (if applicable). \_\_\_\_\_

\_\_\_\_\_  
Ruth Cedillo, Acting Executive Director

\_\_\_\_\_  
Date

**LIHTC Ad Hoc Committee’s Approval and description of discretionary factors (if applicable).**

**TDHCA Board of Director’s Approval and description of discretionary factors (if applicable).**

Committee Chairperson Signature: \_\_\_\_\_

Michael E. Jones, Attorney At Law

\_\_\_\_\_  
Date



**LOW INCOME HOUSING TAX CREDIT PROGRAM**  
**2001 LIHTC/TAX EXEMPT BOND DEVELOPMENT PROFILE AND BOARD SUMMARY**

Texas Department of Housing and Community Affairs

Development Name: **Riverside Meadows**

TDHCA#: 01448

**DEVELOPMENT AND OWNER INFORMATION**

Development Location: Austin QCT: Y DDA: N TTC: N  
 Development Owner: Riverside Meadows, Ltd.  
 General Partner(s): Riverside Meadows I, LLC, Rick J. Deyoe, 100%  
 Construction Category: New  
 Set-Aside Category: Tax Exempt Bond Bond Issuer: Austin Housing Finance Corp.  
 Development Type: Family

**Annual Tax Credit Allocation Calculation**

Applicant Request: \$793,437 Eligible Basis Amt: \$790,031 Equity/Gap Amt.: \$1,053,281  
**Annual Tax Credit Allocation Recommendation: 790,031**  
 Total Tax Credit Allocation Over Ten Years: \$7,900,310

**PROPERTY INFORMATION**

**Unit and Building Information**

Total Units: 240 LIHTC Units: 240 % of LIHTC Units: 100%  
 Gross Square Footage: 236,951  
 Average Square Footage/Unit: 968  
 Number of Buildings: 10  
 Currently Occupied: N

**Development Cost**

Total Cost: 19,265,941 Total Cost/Net Rentable Sq. Ft.: \$82.94

**Income and Expenses**

Effective Gross Income:<sup>1</sup> 1,762,958 Ttl. Expenses: \$843,038 Net Operating Inc.: \$919,920  
 Estimated 1st Year DCR: 1.10

**DEVELOPMENT TEAM**

Consultant: Not Utilized	Manager: Capstone Real Estate Services, Inc.
Attorney: Locke, Liddell & Sapp	Architect: Griffen Architects
Accountant: Rezick, Fedder & Silverman	Engineer: Gray, Jansing Engineering
Market Analyst: Apartment Market Data	Lender: Charter Municipal Mortgage Acceptance Co.
Contractor: Hunt Building Corp.	Syndicator: Related Capital Co.

**PUBLIC COMMENT<sup>2</sup>**

From Citizens:	From Legislators or Local Officials:
# in Support: NC	Sen. Gonzalo Barrientos, District 14 - NC
# in Opposition: NC	Rep. Dawanna Dukes, District 50 - NC
	Mayor Kirk Watson - NC
	Paul Hiligers, City of Austin Community Development Officer Consistent with consolidated plan.

**CONDITION(S) TO COMMITMENT**

- 15. Per §50.7(h)(6) of the Qualified Allocation Plan and Rules, all Tax Exempt Bond Project Applications “must provide an executed agreement with a qualified service provider for the provision of special supportive services that would otherwise not be available for the tenants. The provision of such services will be included in the Declaration of Land Use Restrictive Covenants (“LURA”).”
- 16. Receipt, review and acceptance of a supportive services contract specifying the services to be provided and the cost thereof to the project.
- 17. The project's total annual debt service should not exceed \$836,300.
- 18. Should the terms of the proposed debt be altered, the previous condition should be re-evaluated.

**AD HOC TAX CREDIT COMMITTEE DETERMINATIONS**

Approved Tax Credit Amount: \_\_\_\_\_ Date of Determination: \_\_\_\_\_

**DEVELOPMENT'S SELECTION BY PROGRAM MANAGER IS BASED ON:**

Score  Utilization of Set-Aside  Geographic Distrib.  Tax Exempt Bond.  Housing Type

Other Comments including discretionary factors (if applicable). This project qualifies as a Tax Exempt Financed Project per the requirements of Sec. 50.7(h) of the 2001 QAP. The application has met the Threshold Criteria and has demonstrated consistency with the local consolidated plan. The Applicant has no outstanding material non-compliance issues with respect to its development experience.

\_\_\_\_\_  
Charles E. Nwaneri, Acting Program Manager

\_\_\_\_\_  
Date

\_\_\_\_\_  
David Burrell, Director of Housing Programs Date

**DEVELOPMENT'S SELECTION BY EXECUTIVE DIRECTOR IS BASED ON:**

Score  Utilization of Set-Aside  Geographic Distrib.  Tax Exempt Bond  Housing Type

Other Comments including discretionary factors (if applicable). \_\_\_\_\_

\_\_\_\_\_  
Ruth Cedillo, Acting Executive Director

\_\_\_\_\_  
Date

**LIHTC Ad Hoc Committee's Approval and description of discretionary factors (if applicable).**

**TDHCA Board of Director's Approval and description of discretionary factors (if applicable).**

Committee Chairperson Signature: \_\_\_\_\_

\_\_\_\_\_  
Michael E. Jones, Attorney At Law

\_\_\_\_\_  
Date

*AGENDA ITEM NO. 2(C)*  
**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**

<b>MEMORANDUM</b>
-------------------

**TO:** Ruth Cedillo, Acting Executive Director  
**CC:** Board of Directors; David Burrell, Director of Housing Programs  
**FROM:** Charles E. Nwaneri, Acting Manager of LIHTC  
**DATE:** October 22, 2001

**SUBJECT: Extension requests to place projects in service or commence substantial construction**

Projects requesting extensions are given below. The mandatory \$2,500 extension request fee accompanied each request. Staff has reviewed the information and recommends granting the extensions pursuant to Section 50.11(d) of the 1999 QAP, Section 49.11(d) of the 2000 QAP or Section 50.11(h) of the 2001 QAP.

Project No. 99022, Eban Village Apartments Phase II

Synopsis: Project received debt financing from the City of Dallas and the community development department of Bank of America. The development is neighborhood revitalization within a federal and state enterprise zone, is sponsored by the bank and a nonprofit organization (Southfair Community Development Corporation) and is a prominent part of the Fair Park Gateway Master Plan, conceived by Southfair with community input. Seven of ten of the residential buildings in the project had received certificates of occupancy as of October 3. The common buildings are expected to be completed after the October 31 deadline.

City/County:	Dallas/ Dallas
Set-Aside:	General
Target Population:	Family
Type of Project:	New Construction
Units:	165 LIHTC units and 55 market rate units
Allocation:	\$830,897
Allocation Cost per LIHTC Unit:	\$5,036
Extension Request Fee Paid:	\$2,500
Type of Extension Request:	Extension for placement in service
Current Deadline:	October 31, 2001
New Deadline Requested:	December 28
Prior Extensions on Project:	Yes
Construction Loan Closing:	Extended from 3/20/00 to 4/19/00
Reason for Extension Request, etc.:	Delays were caused by weather
Staff Recommendation:	Grant extension as requested.

Project No. 99111, Roseland Townhomes

Synopsis: The chief executive of the project's general partner is an executive of the Dallas Housing Authority, which sponsored the development. Temporary certificates of occupancy are expected by October 31, 2001. HOPE VI funding in the project required lengthy review by HUD that delayed commencement of construction. The reasons stated by the applicant for requesting the extension are given below.

City/County:	Dallas/ Dallas
Set-Aside:	General
Target Population:	Family
Type of Project:	New Construction
Units:	114 LIHTC units and 38 market rate units
Allocation:	\$776,565
Allocation Cost per LIHTC Unit:	\$6,812
Extension Request Fee Paid:	\$2,500
Type of Extension Request:	Extension for placement in service
Current Deadline:	October 31, 2001
New Deadline Requested:	November 30, 2001
Prior Extensions on Project:	Yes
Construction Loan Closing:	Extended from 4/27/00 to 5/27/00.
Reason for Extension Request, etc.:	Delays were caused by the following: (A) Changes in the utility plan required by City of Dallas (B) HUD review of HOPE VI application (C) 60 days of bad weather (D) Texas Historical Commission review of brick color (30 day delay) (E) Several changes in floor plans to accommodate tenants
Staff Recommendation:	Grant extension as requested.

*AGENDA ITEM NO. 2(D)*

Project No. 00058, Windfern II Townhomes

Synopsis: Applicant closed construction loan on August 14, 2001. As of October 16, rain had fallen on 20 days in the construction period. The late loan closing and the rain have delayed construction.

City/County:	Houston / Harris
Set-Aside:	General
Target Population:	Family
Type of Project:	New Construction
Units:	86 LIHTC units and 58 market rate units
Allocation:	\$513,239
Allocation Cost per LIHTC Unit:	\$5,968
Extension Request Fee Paid:	\$2,500
Type of Extension Request:	Extension for commencement of substantial construction
Current Deadline:	November 15, 2001
New Deadline Requested:	February 15, 2002
Prior Extensions on Project:	Yes
Construction Loan Closing:	Extended from 6/15/00 to 8/15/00.
Reason for Extension Request, etc.:	Delays caused by closing the construction loan late and rain.
Staff Recommendation:	Grant extension as requested.



Project No. 00062, King Fisher Creek Apartments

Synopsis: The Department approved changes to the project on August 28, 2001. Applicant states that the changes were necessary to comply with the City of Austin S.M.A.R.T. Growth Program and Green Builder Program. Compliance with the city programs improved the appeal and utility of the project. Revising the development plans to comply with the city programs delayed the start of construction. The project is small and applicant expects to place the buildings in service early, three months before the deadline.

City/County:	Austin / Travis
Set-Aside:	General
Target Population:	Family
Type of Project:	New Construction
Units:	35 LIHTC units
Allocation:	\$225,813
Allocation Cost per LIHTC Unit:	\$6,452
Extension Request Fee Paid:	\$2,500
Type of Extension Request:	Extension for commencement of substantial construction
Current Deadline:	November 15, 2001
New Deadline Requested:	April 15, 2002
Prior Extensions on Project:	No
Reason for Extension Request, etc.:	Complying with city programs to improve the quality of the project made design changes necessary and delayed the start of construction.
Staff Recommendation:	Grant extension as requested.

Project No. 00124 and 01024, Las Brisas Apartments

Synopsis: The project received a 2001 allocation of \$40,947 to supplement a 2000 allocation of \$563,864. The applicant requests a 90-day extension for commencement of substantial construction because the construction plans could not be completed until the final amount of financing to be supplied by the two allocations was known.

City/County:	Del Rio / Val Verde
Set-Aside:	Nonprofit
Target Population:	Family
Type of Project:	New Construction
Units:	76 LIHTC units
Allocation:	\$40,947 in 2001 and \$563,864 in 2000
Allocation Cost per LIHTC Unit:	\$7,958 (both allocations)
Extension Request Fee Paid:	\$2,500
Type of Extension Request:	Extension for commencement of substantial construction
Current Deadline:	November 15, 2001
New Deadline Requested:	February 13, 2002
Prior Extensions on Project:	Yes
Construction Loan Closing (00124):	Extended from 6/15/00 to 10/1/00.
Reason for Extension Request, etc.:	Delay in finalizing project plans because of uncertainties about the amount of the second (supplemental) allocation.
Staff Recommendation:	Grant extension as requested.

Project No. 00133, Cameron Village Apartments

Synopsis: Wells Fargo, the construction lender, delayed closing the construction loan, thus delaying the commencement of construction.

City/County:	Alice / Jim Wells
Set-Aside:	General
Target Population:	Family
Type of Project:	New Construction
Units:	76 LIHTC units
Allocation:	\$506,623
Allocation Cost per LIHTC Unit:	\$6,666
Extension Request Fee Paid:	\$2,500
Type of Extension Request:	Extension for commencement of substantial construction
Current Deadline:	November 15, 2001
New Deadline Requested:	January 15, 2002
Prior Extensions on Project:	Yes
Construction Loan Closing:	Extended from 6/15/00 to 8/15/00.
Reason for Extension Request, etc.:	Construction lender closed late, causing delay in start of construction.
Staff Recommendation:	Grant extension as requested.

Project No. 00139, Talmadge at Park Central Apartments

Synopsis: The project proposed is the rehabilitation of a 75 year-old, six story building proposed to contain 42 and construction of 78 one-bedroom and 36 two-bedroom units in a new three-story building. Construction is for elderly occupancy and will include three elevators. Applicant requests 60 day extension of commencement of substantial construction because of delays associated with the demolition to rehab the old building and delays associated with moving seven historical buildings on the proposed site to new locations off-site.

City/County:	Amarillo / Potter
Set-Aside:	Nonprofit
Target Population:	Elderly
Type of Project:	New Construction and Acquisition/Rehab
Units:	117 LIHTC units and 39 market rate units
Allocation:	\$716,485
Allocation Cost per LIHTC Unit:	\$6,124
Extension Request Fee Paid:	\$2,500
Type of Extension Request:	Extension for commencement of substantial construction
Current Deadline:	November 15, 2001
New Deadline Requested:	January 14, 2002
Prior Extensions on Project:	Yes
Construction Loan Closing:	Extended from 6/15/01 to 9/13/01.
Reason for Extension Request, etc.:	Delays in interior demolition of the 75 year-old building to be rehabilitated, demolition of two associated structures and relocation of seven historical structures.
Staff Recommendation:	Grant extension as requested.

Project No. 00163, Las Quintas Apartments

Synopsis: Project is in a QCT and Targeted Texas County with a nonprofit general partner, Eagle Pass Housing Assistance Corporation, an affiliate of the Eagle Pass Housing Authority. The Executive Director of the Eagle Pass Housing Authority resigned followed by the withdrawal of the project architect. Both actions delayed the performance of obligations affecting the closing of the construction loan and commencement of substantial construction.

City/County:	Eagle Pass / Maverick
Set-Aside:	Rural
Target Population:	Family
Type of Project:	New Construction
Units:	60 LIHTC units
Allocation:	\$506,878
Allocation Cost per LIHTC Unit:	\$8,448
Extension Request Fee Paid:	\$2,500
Type of Extension Request:	Extension for commencement of substantial construction
Current Deadline:	November 15, 2001
New Deadline Requested:	January 15, 2002
Prior Extensions on Project:	Yes
Carryover	Extended from 10/13/00 to 11/3/00
Construction Loan Closing:	Extended from 6/15/01 to 9/13/01, then to 10/15/01.
Reason for Extension Request, etc.:	Delays have resulted from resignation of Executive Director of the Eagle Pass PHA and withdrawal by the architect.
Staff Recommendation:	Grant extension as requested.

*AGENDA ITEM NO. 2(E)*  
**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**

**MEMORANDUM**

**TO:** Ruth Cedillo, Acting Executive Director  
**FROM:** Brooke Boston, Program Administrator, LIHTC  
**CC:** Charles Nwaneri, David Burrell, Betty Marks, Suzanne Phillips, Tom Gouris, Sara Newsom, Delores Groneck  
**DATE:** November 6, 2001  
**SUBJECT:** **2002 LIHTC QAP – Responses to Public Comments**

On October 5, 2001, the proposed 2002 *Low Income Housing Tax Credit Program Qualified Allocation Plan and Rules (QAP)* was published in the *Texas Register*. The comment period commenced on October 5, 2001, and ended on November 4, 2001. In addition to publishing the document in the *Texas Register*, a copy of the QAP was published on the Department's web site and made available to the public upon request. The Department held twelve public hearings in all eleven service region. As this is the first year for hosting hearings in all eleven service regions, it is informative to see the number of persons who made comment at each of the hearings.

Location of Hearing	Number of Persons Giving QAP Comments
Laredo (8B)	0
Denton (3)	3
Odessa (9)	0
Brookshire (6)	2
Austin (7)	8
El Paso (10)	2
Seguin (8A)	1
Edinburg (8B)	0
Wichita Falls (2)	1
Mt. Pleasant (4)	1
Orange (5)	0
Lubbock (1)	0

The Department received the majority of comments in writing by email, fax and mail. This memorandum provides the Department's response to all comments received. The comments and responses are divided into the following three sections.

- (1) Items that relate directly to the QAP. Such comments and responses are presented in the order they appear in the QAP.*
- (2) Items that do not specifically relate to the QAP. Such comments and responses are presented in alphabetical order by issue.*
- (3) Minor technical changes that are needed to ensure consistency in the QAP.*

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## PUBLIC COMMENT AND DEPARTMENTAL RESPONSE TO ITEMS THAT RELATE DIRECTLY TO THE QAP

### §49.1(c) Allocation Goals

**Comment:** Deletion of the final sentence of this subsection was suggested in order to provide for a more clear, objective, score-based process for allocations as required by SB322.

**Department Response:** Staff agrees that this clarification will allow the QAP to be more consistent with the intent of SB322. Change is reflected below.

*(c) Allocation Goals. It shall be the goal of this Department and the Board, through these provisions, to encourage diversity through broad geographic allocation of tax credits within the state and to promote maximum utilization of the available tax credit amount. The criteria utilized to realize this goal is described in §49.7 (a) through (f) of this title. ~~Such criteria shall be implemented to ensure that the tax credits are allocated to Applicants who are best able to meet recognized needs for affordable housing, as determined by the Department.~~*

### §49.2 Definitions

**Comment:** Because the term “Town Home” was reinstated into the QAP in §40.7(e)(3)(E), the definition for that term, which had been deleted, should be restored. Comment was also received indicating that without the definition it was unclear what style and type of Townhome is permitted.

**Department Response:** Staff agrees that these clarifications are needed for consistency throughout the document and to clarify what the Department means by Town Home. The proposed definition for Town Home is identical to the definition used in the 2001 QAP. Because the term Minority Owned Business was added in §49.7(e)(3)(D), a definition for it has been generated based directly on the language in §2306.6734(c) of SB322. Likewise, the term Prison Community was added in §49.6 so a definition has been generated based on the 2001 QAP definition.

*Minority Owned Business – A business entity at least 51% of which is owned by members of a minority group or, in the case of a corporation, at least 51% of the shares of which are owned by members of a minority group, and that is managed and controlled by members of a minority group in its daily operations. Minority group includes women, African Americans, American Indians, Asian Americans, and Mexican Americans and other Americans of Hispanic origin.*

*Prison Community – A city or town which is located outside of a Metropolitan Statistical Area (MSA) or Primary Metropolitan Statistical Area (PMSA) and was awarded a state prison as set forth in the Reference Manual.*

*Town Home - Each Town Home living unit is one of a group of no less than four units that are adjoined by common walls. Town Homes shall not have more than two walls in common with adjacent units. Town Homes shall not have other units above or below another unit. Town Homes shall not share a common back wall. Town Homes shall have individual exterior entries.*

### §49.2(7) Definition of Applicant

**Comment:** The phrase “member of the Development Team” should be added to the definition of “applicant” to prevent former employees from fully participating in the tax credit program upon leaving the Department, and to eliminate a perceived loophole in conflict of interest and revolving door provisions.

**Department Response:** §2306.6702(1) of SB322 provides a clear definition of Applicant, which is included in the original draft language. The definition in the bill does not include members of the development team. Staff does not recommend any further changes.

#### §49.2(14) Definition of At-Risk Development

**Comment:** At-Risk Developments should include Section 538 of the Housing Act of 1949 as it is considered to be in the statewide preservation portfolio, and include Section 221(d)(4) transactions since they also have expiring Section 8 HAP contracts which will lose their affordability. Comment was also received suggesting that paragraph (B) relating to the eligibility for the set-aside should be broadened to include projects redeveloped for the preservation of affordable housing units, but for reasons other than the two currently listed. The primary category missed is “replacement units,” which are units that replace other substandard units being demolished, but which are not being replaced on the same site and are not necessarily having funding expire. The specific proposed solution is to add a third category to the definition of At-Risk Development that adds a project developed as part of a replacement housing plan.

**Department Response:** Staff supports the addition of the additional proposed programs that will expand the Department’s ability to preserve affordable housing through the At-Risk Development set aside. The two stipulations relating to eligibility for the set-aside were specifically stated in 2306.6702(5) of SB322, and did not address replacement housing. No changes on that item are proposed.

*(14) At-Risk Development – a development that:*

(A) receives the benefit of a subsidy in the form of a below-market interest rate loan, interest rate reduction, rental subsidy, Section 8 housing assistance payment, rental supplement payment, or rental assistance payment under the following federal laws, as applicable:

*(i) Sections 221(d)(3), (4) and (5), National Housing Act (12 U.S.C. Section 1715l);*

*(ii) Section 236, National Housing Act (12 U.S.C. Section 1715z-1);*

*(iii) Section 202, Housing Act of 1959 (12 U.S.C. Section 1701q);*

*(iv) Section 101, Housing and Urban Development Act of 1965 (12 U.S.C. Section 1701s);*

*(v) any project-based assistance authority pursuant to Section 8 of the U.S. Housing Act of*

*1937; or*

*(vi) Sections 514, 515, ~~and~~ 516, and 538 Housing Act of 1949 (42 U.S.C. Sections 1484, 1485, and 1486); and*

(B) is subject to the following conditions:

*(i) the stipulation to maintain affordability in the contract granting the subsidy is nearing expiration (expiration will occur within two calendar years); or*

*(ii) the federally insured mortgage on the development is eligible for prepayment or is nearing the end of its mortgage term (the term will end within two calendar years).*

#### §49.2(30) Definition of Development Consultant

**Comment:** The definition of Development Consultant should explicitly state that the consultant is a member of the Development Team to ensure that perceived loopholes regarding conflict of interest and revolving door provisions are eliminated.

**Department Response:** §49.2(32), which defines Development Team, already states that a consultant is a member of the Development Team. Staff does not recommend any changes.

#### §49.2(42) Definition of Historic Development

**Comment:** Comment noted that the definition of Historic Development does not include historic properties designated by local government entities, even though this is not consistent with federal regulations or with Exhibit 208 of the QAP which states that evidence for the selection criteria can include local government

entities. A suggestion was also made that an Application should have the ability to show that a historic designation has been applied for at the time of application, but should not require approval until the time of allocation.

**Department Response:** Staff accepts the change relating to local entities to ensure consistency in the document. However, staff does not recommend that changes be made to allow the designation to be approved up until the time of the awards. The reason for this recommendation is that the QAP and SB322 are clear about sending applications to underwriting, and subsequently recommending applications to the Board, based on score. The six points from this designation may be instrumental in determining whether an application should or should not be underwritten, and potentially recommended. To process an application under the assumption that the site will get the designation, and then have it fall through, will be to the detriment of another application that could have been underwritten and recommended. The competitive nature of the program dictates that all documentation must be received no later than the date that the application cycle closes to qualify for points.

*(42) Historic Development – A residential Development that has received a historic property designation by a federal, ~~or~~ state or local government entity.*

#### **§49.2(49) Definition of Ineligible Building Types**

**Comment:** It was widely recommended that the language in clause (i) that prohibits developments on contiguous property or within an existing subdivision should be deleted because it discourages single family dispersion for the applications that are eligible for single family developments. Comment was also made that the local funding contribution addressed in subclause (II) should be reduced to 7% of hard costs to prevent the triggering of other cumbersome federal regulations; and that the documentation requirements for this exhibit should only involve proof of application for local funding at the time of tax credit application, and proof of firm commitment at the time of allocation, because local funding cycles are not synchronized with the tax credit cycle. Another comment indicated that the language “less than four or fewer” was unclear and that there is inconsistency with whether the minimum is four units or 36 units.

**Department Response:** Staff concurs with the suggested comments regarding contiguous property and 7% of hard costs. To accommodate staff processing, the time frame for evidence of a commitment was altered from the suggested “day of allocation” to June 1, 2001, which will be several weeks before the first allocation meeting. Clarification regarding the number of units was remedied by removing “or fewer” and by clarifying between buildings and developments.

*(49) Ineligible Building Types - Those buildings or facilities which are ineligible, pursuant to this QAP, for funding under the tax credit program as follows:*

(A) Hospitals, nursing homes, trailer parks and dormitories (or other buildings that will be predominantly occupied by Students) or other facilities which are usually classified as transient housing (other than certain specific types of transitional housing for the homeless and single room occupancy units, as provided in the Code, §§42(i)(3)(B)(iii) and (iv) are not eligible. However, structures formerly used as hospitals, nursing homes or dormitories are eligible for credits if the Development involves the conversion of the building to a non-transient multifamily residential development.

(B) Single family detached housing, duplexes, and triplexes shall not be included in tax credit developments. The only exceptions to this definition are:

*(i) Any ~~Development~~ Building comprised of less than four ~~or fewer~~ residential Units, regardless of employee or owner occupied Units, ~~located on contiguous property under common ownership, management and Control or dispersed within an existing residential subdivision and satisfying either of the requirements listed in subclauses (I) and (II) of this clause shall not be considered to include an Ineligible Building Type.~~*

(I) Developments with 36 units or less that are located within a city or county with a population of not more than 20,000 or 50,000, respectively; or

(II) Developments receiving a financial contribution from the local governing entity in an amount equal to or exceeding seven ~~ten~~ percent of the construction hard costs. The financial contribution can be either a capital contribution, in-kind services to the Development, or a combination of capital contribution and in-kind services. The in-kind services must be above and beyond services typically provided to similar developments and must be fully documented in the form of a firm commitment proof of application at the time of Application, and proof of firm commitment by June 1, 2002.

(ii) *An existing Rural Development that is federally assisted within the meaning of the Code, §42(d)(6)(B) and is under common ownership, management and Control shall not be considered to include an Ineligible Building Type. For qualifying federally assisted Rural Developments, construction cannot include the construction of new residential units. Rural Developments purchased from HUD will qualify as federally assisted.*

(C) Any Qualified Elderly Development of two stories or more that does not include elevator service for any Units or living space above the first floor.

#### **§49.2(63) Definition of Qualified Elderly Development**

**Comment:** Comment suggested that paragraph (A), relating to developments solely occupied by persons over 62 years of age, seems unnecessary because it is covered in paragraph (B) relating to developments with 80% of the Units occupied by persons over 55 years of age.

**Department Response:** This definition is generated to capture the two exceptions within the Fair Housing Act that allow developments for the elderly. The two classifications are quite different. No changes are proposed.

#### **§49.2(65) Definition of Qualified Nonprofit Organization**

**Comment:** Because the QAP currently says a Qualified Nonprofit may compete in any set-aside, it is unclear whether the Qualified Nonprofit has to select a set-aside, or if, once the nonprofit set-aside is exhausted, the application would be moved into another set-aside to compete. There was support for redrafting the language to make sure that a Qualified Nonprofit Organization could be considered in any set-aside, and not have to select one set-aside, because the current definition did not fully reflect the language in SB322.

**Department Response:** §2306.6729 of SB322 states, “A qualified nonprofit organization may compete in any low income housing tax credit allocation pool, including: 1) the nonprofit allocation pool, 2) the rural projects/prison communities allocation pool, and 3) the general projects allocation pool.” The bill does not indicate in any way that the nonprofit organization should be allowed to *simultaneously* apply in all of those set-asides. However, staff concurred that the definition needed clarification to indicate that a specific set-aside must be selected and that an application will only compete within the selected set-aside. The references to the specific set-asides in the last sentence were also revised to make sure each set-aside consistently uses the same name throughout the QAP. The administration of trying to “roll” applications to other set-asides once they are found to be non-competitive in their initial set-aside selection, or of allowing them to compete universally, would be difficult to administer, and would lead to a level of subjectivity that staff, via SB322, is seeking to avoid.

*(65) Qualified Nonprofit Organization - An organization that is described in the Code, §501(c)(3) or (4), as these cited provisions may be amended from time to time, that is exempt from federal income taxation under the Code, §501(a), that is not Affiliated with or Controlled by a for profit organization, and includes as one of its exempt purposes the fostering of low income housing within the meaning of the Code, §42(h)(5)(C). A Qualified Nonprofit Organization may select to compete in any one of the set-asides, including, but not limited to, the nonprofit set-aside, the rural developments set-aside, the ~~preservation~~ At-Risk Developments set-aside and the general set-aside.*

## §49.2(77) Definition of Special Housing Development

**Comment:** Multiple comments were received indicating that the provision for Special Housing Developments should be removed from the QAP because it encourages the segregation of disabled persons. It was noted that the Department, in its State Low Income Housing Plan, has a stated goal of discouraging segregation such as this.

**Department Response:** In an effort to ensure that the QAP is consistent with the Department goals in the SLIHP, all references to Special Housing Developments have been removed from the QAP, including the definition at 49.2(77).

~~*(77) Special Housing Development—Any Development developed specifically for special housing need groups, including mental health/mental retardation Developments, group homes, housing for the homeless, transitional housing, congregate care facilities, or Developments for persons with HIV/AIDS.*~~

## §49.2(84) Definition of TxRD-USDA

**Comment:** To avoid confusion with the new State Rural Development Agency, the initials for TxRD-USDA should be changed.

**Department Response:** As the new State Rural Development Agency has now been named the Office of Rural Community Affairs, with the acronym ORCA, confusion should now be alleviated. No changes are proposed to the QAP.

## §49.4(a) Application Submission

**Comment:** As drafted, it is unclear whether an Applicant can submit an entire application during the Pre-Application phase or whether they may only submit the documents associated with a Pre-Application.

**Department Response:** Staff is always pleased to accept a submission of an entire application at any time during the cycle. However, due to the limitations on staff time from the day Pre-Applications are due to the time Pre-Application results must be released, staff will not have time to review the entire application at once. The application would be reviewed for its Pre-Application criteria, and once the results were released, staff would then be able to process the remainder of the application. This approach is helpful to staff, who can do the rest of the review in the “gap” of time after Pre-Application results are released but before other Applications are submitted. The language has been changed to make this clear.

*(a) Application Submission. Any Applicant requesting a Housing Credit Allocation or a Determination Notice must submit an Application to the Department during the Application Acceptance Period. A complete Application may be submitted at any time during the Application Acceptance Period, and is not limited to submission after the close of the Pre-Application Cycle. However, a complete Application received during the Pre-Application Cycle will initially only be reviewed for Pre-Application Criteria. The remainder of the Application will be reviewed once the results of the Pre-Application Cycle have been announced. Only one Application may be submitted for each site. While the Application Acceptance Period is open, Applicants may withdraw their Application and subsequently file a new Application along with the required Application fee. The Department is authorized to request the Applicant to provide additional information it deems relevant to clarify information contained in the Application or to submit documentation for items it considers to be an Administrative Deficiency. An Applicant may not change or supplement an Application in any manner after the filing deadline, except as it relates to a direct request from the Department to remedy an Administrative Deficiency as further described in §49.2(2) of this title or to the amendment of an application after an allocation of tax credits as further described in §49.7(k) of this title.*

## §49.4(d) Availability of Pre-Application and Application

**Comment:** Language in this subsection should be revised to ensure that all exhibits will be available for public disclosure immediately after the Pre-Application and Application periods close, respectively. All personal financial statements and any other confidential information allowed to be kept from disclosure by the Texas Public Information Act should be required to be placed in a single exhibit. Only this exhibit should be kept concealed and may still be disclosed if the Texas Public Information Act does not protect the information from disclosure.

**Department Response:** To satisfy the requirements of SB322, and to strive to allow our program to be as transparent as possible, staff suggests making the requested changes.

*(d) Availability of Pre-Application and Application. Pre-Applications and Applications for tax credits are public information and are available upon request after the Pre-Application and Application Acceptance Periods close, respectively. All Pre-Applications and Applications, including all exhibits and other supporting materials, except Exhibit 109, will be made available for public disclosure immediately after the Pre-Application and Application periods close, respectively. The content of Exhibit 109 may still be made available for public disclosure upon request if the Attorney General's office deems it is not protected from disclosure by the Texas Public Information Act. Exhibits to an Application will not be available for public disclosure until after the Board approves the Allocation of tax credits, in accordance with the Texas Public Information Act of the Government Code Chapter 552.*

#### **§49.4(e) Confidential Information**

**Comment:** It was suggested that the first sentence of this section relating to an Applicant marking any exhibit they wish not to be seen, should be deleted for consistency with changes made in §49.4(d).

**Department Response:** Staff concurs with this suggestion.

*(e) Confidential Information. An Applicant shall mark each Exhibit or a portion thereof that the Applicant considers confidential as to trade secrets or commercial or financial information, in which the Applicant desires not to be disclosed in accordance with Texas Public Information Act. The Department may treat the financial statements of any Applicant as confidential and may elect not to disclose those statements to the public. A request for such information shall be processed in accordance with §552.305 of the Government Code.*

#### **§49.4(f)(3)(A) Required Application Notifications – Submission Log**

**Comment:** The reference to the application submission log should list all of what the log will include and it should additionally include full contact information for all members of the development team.

**Department Response:** The details of the Application Log are already included elsewhere in the QAP. Staff is adding a reference to the other section of the QAP for referential integrity. Staff also suggests that all of the details on what is included in the log should be moved to the other section of the QAP so that the information is kept together in one easily referenced location. Staff supports the addition of the Development Team information.

(A) publish an Application submission log, as further described in §49.12(b) of this title, on its web site. ~~Such log shall contain the Development's name, address, set aside, number of units, requested credits, requested selection criteria score and the owner contact name and phone number.~~

#### **§49.4(f)(8)(B) Required Application Notifications**

**Comment:** The words “if feasible” should be deleted from subparagraph (8)(B) relating to the Department’s web posting of any documents relating to the Application process.

**Department Response:** SB322, at §2306.6717 states, “Subject to Section 2306.67041, the department shall make the following items available on the department’s web site,” and the second item under this list states, “before the 30<sup>th</sup> day preceding the date of the relevant board allocation decision, except as provided by Subdivision (3), the entire application, including all supporting documents and exhibits, the application log, a scoring sheet providing details of the application score, and any other document relating to the processing of the application.” In referring back to the referenced §2306.67041, the Department is tasked with researching the feasibility of an on-line application for the tax credit program. In subsection (e) of that section it states, “Before the implementation of the on-line application system, the department may implement the requirements of §2306.6717 in any manner the department considers appropriate.”

The Department is undertaking the feasibility study at this time and until further solutions are determined regarding the best approach for posting all of these documents, it is not feasible for the Department to post all four volumes of each application (averaging 350 pages each) on our web site for the 2002 cycle. The LIHTC Program is striving to achieve as much of the requirement of 2306.6717 (although it is not required at this time) for the 2002 cycle by posting to the web all of Volume 1 of each Application, the application log, scoring sheets and other relevant processing documents. The Department will meet its obligations under §49.4(d) by providing the documents for viewing here at the Department during business hours. No changes are proposed.

#### **§49.4(g) Board Recommendations**

**Comment:** Comment suggested that the phrase “without good cause” is unclear, as it relates to when the Board may make an allocation decision that conflicts with the recommendations of staff. Under clause (1) it was suggested that the Department unfairly penalizes border area applications by giving the Department the ability to adjust credit amounts downward if the Department believes the costs are too high. Historically the Department has underestimated costs in border areas.

**Department Response:** The sentence with the clause “without good cause” was taken verbatim from §2306.6731 of SB322. No changes are proposed. The clause relating to the Department’s ability to adjust credits is intended to prevent more credits being issued to a development than is actually necessary and ensure the most efficient use of tax credit dollars. It is not intended to penalize any applicant or development and the Department, through its underwriting division, is continually working to improve our methodology so that those type of effects are minimized.

#### **§49.4(n) Cost Certification or Carryover Filings**

**Comment:** The Department should extend the Carryover deadline to the maximum time provided by §42 of the Internal Revenue Code, or at least extend it to December 1 of each year. The current timeframe serves no useful purpose, and Congress made a strong policy decision by extending the time for Carryover. A comment was also made suggesting that the Department consider providing deadlines for review and approval of Carryover and placement in service documents including the issuance of IRS Forms 8609. It has caused some developers to lose proceeds from sales of credits, be charged additional interest, and incur other costs caused by delays. These reviews are equally important for the Applicant, and by placing deadlines that the Department must meet in the QAP, the Department will be forced to allocate sufficient staff to review these documents.

**Department Response:** As advised by our legal counsel specializing in federal issues relating to tax credits, the Department is free to adopt more stringent tests for carryover allocations than is permitted under the Code. Given the demand for credits in Texas and the need for housing, the Department is committed to

getting projects started as quickly as possible. No changes are proposed for that comment. The inclusion of carryover and 8609 timeframes for the Department will better allow the Developer to coordinate and plan with lenders and syndicators to reduce any potential losses.

*(n) Cost Certification or Carryover Filings. Developments that will be placed in service and request IRS Forms 8609 in the year the Commitment Notice was issued must submit the required Cost Certification documentation and the compliance and monitoring fee to the Department by the second Friday in November of that same year. All other Developments which received a Commitment Notice, must submit the Carryover documentation to the Department no later than the second Friday in October of the year in which the Commitment Notice is issued. The Carryover Allocation must be properly completed and delivered to the Department as prescribed by the Carryover Allocation Procedures Manual. All complete Carryover filings will be reviewed and executed by the Department no later than 90 days from the date of receipt of the Carryover documentation. The Department will issue IRS Forms 8609 no later than 90 days from the date of receipt of the Cost Certification documentation, so long as all subsequent documentation requested by the Department related to the processing of the Cost Certification documentation has been provided on or before the seventy-fifth day from the date of receipt of the original Cost Certification documentation. Any deficiency letters issued to the Owner pertaining to the Cost Certification documentation will also be copied to the syndicator.*

#### **§49.5 Representation by Former Board Member or Other Person**

**Comment:** Specific language from SBB322 was proposed to be integrated into the QAP to more thoroughly address concerns relating to conflict of interest and revolving door issues.

**Department Response:** The Department agrees that the additional detail regarding the revolving door policy from §2306.6733 of SB322 will alleviate uncertainty by being more clear and enforceable. To include the language, a new subsection (d) has been added to §49.5

#### *(d) Representation by Former Board Member or Other Person*

*(1) A former board member or a former director, deputy director, director of housing programs, director of compliance, director of underwriting, or Low Income Housing Tax Credit Program Manager employed by the Department may not:*

*(A) for compensation, represent an Applicant for an allocation of tax credits or a Related Party before the second anniversary of the date that the Board member's, director's, or manager's service in office or employment with the Department ceases;*

*(B) represent any Applicant or Related Party or receive compensation for services rendered on behalf of any Applicant or Related Party regarding the consideration of an Application in which the former board member, director, or manager participated during the period of service in office or employment with the Department, either through personal involvement or because the matter was within the scope of the board member's, director's, or manager's official responsibility; or for compensation, communicate directly with a member of the legislative branch to influence legislation on behalf of an Applicant or Related Party before the second anniversary of the date that the board member's, director's, or manager's service in office or employment with the Department ceases.*

*(2) A person commits an offense if the person violates this section. An offense under this section is a Class A misdemeanor.*

#### **§49.5(b)(2) Debarment from Program Participation**

**Comment:** To additionally curb conflict of interest issues, members of the Development Team should be added to this paragraph to prevent former employees from fully participating in the tax credit program upon leaving the Department.



**Department Response:** Because §2306.6703 of SB322 did not include the Development Team in this criteria for ineligibility, the Department feels that the requirements of the bill are met by the existing definition. No changes are proposed.

#### **§49.6(b)(1) Regional Allocation**

**Comment:** It was suggested that the tax credit program should employ a metropolitan/nonmetropolitan subregional allocation formula, using the same formula used in the existing regional allocation. The QAP should apply this allocation ratio to each of the regional allocations, to prevent the low income targeting points from driving all tax credits into metropolitan areas. This subregional allocation would recognize the economic differences between various regions across the state, adjust for the lower AMFI's and rents in nonmetropolitan areas, and ensure that those areas are not unduly penalized.

**Department Response:** The Department feels that the concept of a metropolitan/nonmetropolitan allocation is already being addressed in two ways. First, the existence of the rural set-aside commits funds to the nonmetropolitan areas, even when scores in those areas are lower. Second, the Uniform Housing Needs Scoring Component does use the same needs figures from the regional allocation formula and applies them on a county by county basis within each region to determine where the greatest need is intraregionally. Because these two factors already account for issues within a region, the Department believes the concept of a subregional allocation by metropolitan/ nonmetropolitan should be further studied and explored, and would need more substantial exposure to public comment before integration into the QAP.

#### **§49.6(b)(1) Nonprofit Set-Aside**

**Comment:** It was suggested that the nonprofit set-aside be increased to 15% to promote housing provided by qualified nonprofits that are mission driven.

**Department Response:** The Department believes that the current percentage for the nonprofit set-aside is sufficient to meet the goals of the Program and the nonprofit set-aside requirement established by Code. Traditionally, the Department exceeds the 10% requirement. Also, nonprofits not competing in the set-aside may still receive allocations, thereby increasing the number of nonprofits receiving awards. No changes are proposed.

#### **§49.6(b)(2) Rural Development Set-Aside**

**Comment:** Many comments were received asking that the Department return to the language in the 2001 QAP which reserved 25% of the 15% rural development set-aside for projects financed through Rural Development (TxRD-USDA). This language is essential for preservation purposes, transfers, and rehabilitation needed for the projects financed by TxRD-USDA in rural areas of Texas. Although a new "At-Risk Development" set-aside has been established, it would be difficult for existing TxRD projects in rural areas to score high enough to receive an allocation. One comment was also received asking that Prison Communities be reinstated into the QAP and that they should be treated as Economically Distressed Areas and receive a 30% increase to eligible basis.

**Department Response:** The Department had initially removed this sub-set-aside based on the idea that the Applications that were previously funded under this sub-set-aside would be served in 2002 by the At-Risk Development set-aside. The many comments we have received indicate that this may not be the case. Staff recommends returning to the sub-set-aside and has proposed language that is taken directly from the 2001 QAP. Prison Communities have not been treated as Economically Distressed Areas in the recent past, nor were they ever issued a 30% increase in eligible basis (which is not authorized by Code) however they were

included as part of the rural set-aside, and it is proposed that they be reinstated. To accompany this change, the definition for Prison Community has been included in §49.2

*(2) At least 15% of the State Housing Credit Ceiling for each calendar year shall be allocated to Developments which meet the Rural Development definition or are located in Prison Communities. Rural Developments applying for greater than 76 Units will be ineligible for the Rural Set-Aside. Of this 15% allocation, 25% will be set-aside for projects financed through Rural Development (TxRD-USDA). Projects financed through TxRD-USDA's 538 Guaranteed Rural Rental Housing Program will not be considered under the 25% portion. Should there not be sufficient qualified applications submitted for the TxRD-USDA set-aside, then the credits would revert to projects that meet the Rural Project definition or are located in Prison Communities.*

#### **§49.6(b)(4) General Set-Aside**

**Comment:** The Department should pick the best projects first, and then make sure that the nonprofit set-aside has been met. The use of mutually exclusive set-asides causes the department to consider only qualified nonprofits in the nonprofit set-aside and not consider them for the remaining 90% of credits. This section should be deleted to eliminate this mutually exclusive set-aside. It was also stated that SB322 requires the nonprofit projects to be allowed to compete in any set-aside which implies that the set-aside categories are not mutually exclusive.

**Department Response:** In compliance with SB322, the Department does not limit nonprofits to participating in the nonprofit set-aside; a nonprofit may elect to compete in any one of the set-asides. The Department does not agree that this implies that the set-asides must be mutually exclusive. While staff sees the merits of allowing projects to “roll” into other set-asides, the administration of trying to “roll” applications to other set-asides once they are found to be non-competitive in their initial set-aside selection would be difficult and unclear, and would lead to a level of subjectivity that staff, in compliance with SB322, is seeking to avoid.

#### **§49.6(b)(5) Elderly Set-Aside**

**Comment:** Comments asked that the elderly overlay set aside be increased to 15% to better reflect demographic trends in the elderly population.

**Department Response:** The Department’s Housing Resource Center also confirmed the demographic basis for increasing this overlay set aside to 15%.

*(5) At least ~~15~~12% of the State Housing Credit Ceiling for each calendar year shall be allocated to Qualified Elderly Developments. Qualified Elderly Developments will not constitute an additional exclusive set-aside; however at least ~~15~~12% of Developments allocated through the set-asides identified in paragraphs (1) through (4) of this subsection will also be Qualified Elderly Developments. Prior to making recommendations to the Board with respect to Applications which, if funded in accordance with such recommendations, would total, taking into account all Commitment Notices previously issued during the calendar year, at least ~~85~~88% of the State Housing Credit Ceiling for such year, the Committee shall advise the Board as to the percentage of Qualified Elderly Developments which have received commitments or are recommended to receive commitments for the year.*

#### **§49.7(a) Pre-Application**

**Comment:** It was suggested that Developments that have TxRD funding should be exempt from the Pre-Application process. Several other comments more specifically requested that new TxRD funding should be exempt from the Pre-Application, but that Developments without new TxRD funding should still be eligible to go through the Pre-Application process. This difference is because developments with new TxRD funds have already been underwritten by Farmers Home and/or RD and had their loan approved. The other TxRD applications, without new funding, rely primarily on tax credit equity and therefore are more likely to benefit from the pre-application process.

It was suggested that the experience requirement under Exhibit 105E should be moved to the Pre-Application evaluation process, in lieu of obtaining a pre-certification, so that Applicants would know if they had met the requirement at the same time they find out if their score is competitive. Further, the applicant should not be required to have site control for the Pre-Application because it causes a cost burden on the applicant to carry the land that long and will reduce the availability of suitable parcels because land sellers will be unwilling to wait that long. The requirement for support letters at Pre-Application should also be removed because many people who would draft support letters will be on holiday.

**Department Response:** Staff concurs with the suggestion regarding TxRD developments. The Department strives to increase efficiency and minimize redundancy in our joint projects with TxRD and this revision will continue to promote that goal. To ensure that exemption is comprehensive and does not enable any one party to submit a Pre-Application and therefore garner the extra points, the exemption from the Pre-Application Evaluation also specifies that an Applicant with new TxRD funding is not eligible for the points associated with the Pre-Application.

To have the experience documentation submitted with each Pre-Application will not serve the primary purpose of the pre-certification for experience which is to reduce the amount of paperwork submitted in each application. With this proposal every Pre-Application would have to have all of the necessary documentation. It should also be noted that an Applicant may request a certification until seven days before the Applicant Acceptance Period opens. While the Department is aware of the costs associated with keeping a site under control for a longer period of time, the only successful way to have a meaningful Pre-Application process is to ensure that the proposed development being evaluated is under control; otherwise the results of the Pre-Application would not be substantive enough for applicants to base a decision to move forward. Likewise, for the selection criteria results from Pre-Application to be meaningful all of the selection criteria must be submitted including support letters.

*(a) Pre-Application Evaluation Process and Criteria. Eligible Pre-Applications will be evaluated for Pre-Application Threshold Criteria, Pre-Application Selection Criteria, and as requested, adherence to the Subsection §49.9(b) of this title, in accordance with this section of the QAP and the Rules. Applications that have new TxRD-USDA financing for either new construction or rehabilitation, as evidenced by confirmation from the state office of TxRD, are exempted from the Pre-Application Evaluation Process and are not eligible to receive points for submission of a Pre-Application. Applications for rehabilitation of TxRD properties that do not have new financing from TxRD-USDA are not exempt from the Pre-Application Evaluation Process and are eligible to receive points for submission of a Pre-Application.*

#### **§49.7(a)(1)(D) Pre-Application Notification to Public Officials**

**Comment:** The requirement to notify officials at the Pre-Application stage should be removed because it unduly burdens the applicants and the public officials and also interjects the appearance of politics into the pre-application review.

**Department Response:** Sending notification letters is a simple requirement that involves minimal time on the part of the applicant. It is unclear how early notification would unduly burden a public official, as it only allows them more time to take interest in the development. The requirement was integrated into Pre-

Application specifically to ensure openness with public officials, and thereby their constituents; not to add politics to the Pre-Application process. The Pre-Application review strictly involves reviewing a minimal threshold and then reviewing selection criteria. Any political feedback garnered during the application process is only considered once the entire application is under review. No changes are proposed.

#### **§49.7(b)(2) Selection Criteria Review**

**Comment:** Comment was received indicating that the sentence “The Department may not award points for a scoring criterion that is disproportionate to the degree to which a proposed Development complied with that criteria,” is not applicable to the QAP because all of the points are fixed and determinable numbers, not ranges.

**Department Response:** The referenced sentence was taken verbatim from §2306.6725(d) of SB322. No changes are proposed.

#### **§49.7(b)(3)(C) Underwriting Evaluation by Third Party**

**Comment:** The language relating to a third party performing the underwriting analysis has two problems. The first is that it does not ensure that the same underwriting criteria would be used and would be consistent with TDHCA underwriting. The second is that the open-ended cost of this would not be budgeted ahead of time, and may be unexpectedly incurred.

**Department Response:** To ensure that the same underwriting standards will be applied in the event of third party underwriting, language has been added to that extent. In regards to the cost, the QAP already states in §49.13(d) that “the fees paid by the Development Owner to the Department for third party underwriting will be credited against the commitment fee...” This ensures that this unexpected cost will not be detrimental to the budget created by the Applicant.

(C) The Department may have an outside third party perform the underwriting evaluation to the extent it determines appropriate, consistent with the guidelines outlined in §49.8 of this title. The expense of any third party underwriting evaluation shall be paid by the Applicant prior to the commencement of the aforementioned evaluation.

#### **49.7(b)(4) Site Evaluation**

**Comment:** Comment was received asking to revise the evaluation factors identified in §49.7(c). To facilitate revisions of that section, details relating to the evaluation of sites were removed from that section.

**Department Response:** Details relating to how sites are evaluated were moved to this section from §49.7(c) to streamline that exhibit and place the discussion relating to evaluations in one location.

§49.7(b)(4) Site Evaluation. Site conditions shall be evaluated through a physical site inspection by Department staff. Such inspection will evaluate the site based on the Site Evaluation form provided in the Application and provide a site evaluation of "Excellent," "Acceptable," "Poor" or "Unacceptable". The evaluations shall be based on condition of the surrounding neighborhood and proximity to retail, medical, recreational, and educational facilities, and employment centers. The site's visibility to prospective tenants and accessibility of the site via the existing transportation infrastructure and public transportation systems shall be considered. "Unacceptable" sites would include a non-mitigable environmental factor that would impact the health and safety of the residents.

#### **49.7(c) Evaluation Factors**

**Comment:** To truly create a clear objective score-based process for selecting applications, the QAP must move away from the existing broad subjective evaluation factors that are permitted by staff. The specific suggestion was to revise (c) to a very succinct statement (provided in the comment) giving responsibility for any subjective evaluation factor issues specifically to the Board and identifying what those items are.

**Department Response:** Reference to the Board making these evaluation factor decisions is noted, however the Committee has also been included to provide the Committee the opportunity to make recommendations to the Board that denote concerns relating to these evaluation factors. Several of the proposed deletions need to be maintained either in this section or elsewhere in the QAP. The clause relating to the allocation to multiple entities is required by the Texas General Appropriations Act. Geographic dispersion is already addressed by the regional allocation formula, the exhibit 201 points and the concentration policy so its deletion is acceptable. The housing type evaluation factor was seldom utilized. Several of the proposed factors relating to satisfying set-asides, regional allocation and concentration limitations, are already identified elsewhere in the QAP as being a required factor in recommending developments.

~~(c) Evaluation Factors. The Department staff, Committee, and Board shall evaluate an Application for recommendation of a Commitment Notice or Determination Notice on the basis of additional factors beyond scoring criteria. These additional factors include the items described in paragraphs (1) through (5) of this subsection; provided, however, that Tax Exempt Bond Development Applications will be evaluated only under paragraphs (2) and (4) of this subsection. The Committee and Board may choose to evaluate the recommendations of credits for factors other than scoring for one or more of the following reasons:~~

~~(1) Geographic Dispersion. The dispersion of credits within each region shall be evaluated to ensure that Developments are dispersed throughout a region, which may include a review of the population of a city and/or county in relation to the number of existing tax credit and affordable units created.~~

~~(1) to serve a greater number of lower income families for fewer credits;~~

~~(2) to serve a greater number of lower income families for a longer period of time;~~

~~(3) Site Conditions. Site conditions shall be evaluated through a physical site inspection by Department staff. Such inspection will evaluate the site based on the Site Evaluation form provided in the Application Submission Procedures Manual and provide a site evaluation of "Excellent," "Acceptable," "Poor" or "Unacceptable". The evaluations shall be based on condition of the surrounding neighborhood and proximity to retail, medical, recreational, and educational facilities, and employment centers. The site's visibility to prospective tenants and accessibility of the site via the existing transportation infrastructure and public transportation systems shall be considered. "Unacceptable" sites would include a non-mitigable environmental factor that would impact the health and safety of the residents.~~

~~(3) Housing Type. The type of housing provided may be considered in order to serve a broad segment of the population.~~

~~(3)(4) Program's Goals and Consistency with Local Need. The Development's impact on the Low Income Housing Tax Credit Program's goals and objectives including, but not limited to, to ensure the Development's consistency with local needs or its impact as part of a revitalization or preservation plan.~~

~~(45) Allocation to Multiple Entities. The goal of allocating to ensure the allocation of credits among as many different entities as practicable without diminishing the quality of the housing that is built as required under the Texas General Appropriations Act applicable to the Department.~~

#### §49.7(d) Tie Breaker Criteria Relating to Special Housing Development

**Comment:** The language at the end of paragraph (d) should be grammatically corrected. Another comment asked that number (8) relating to integrated housing include the word "accessible," or that a separate tie breaker be added that awards points for construction of units in conformance with Section 504, but in excess of the percentage required by 504. Multiple comments were received asking that number (4) relating to Special Housing Developments be removed as a Tie Breaker Criteria as it encourages segregation of the disabled community, as opposed to supporting integrated housing as indicated in the SLIHP.

**Department Response:** The Department is eager to increase consistency between the SLIHP and the QAP, and agrees that the Special Housing Development criteria may encourage segregation and should therefore be removed. The idea of awarding points for Developments that go above and beyond the requirements of

§504 will be further researched and contemplated for the 2003 QAP. With the many other changes being made to the 2002 QAP it would be imprudent to hastily make these point changes without further discussion with both the advocacy groups and the development representatives. Staff proposes the grammatical change, adding the word accessible in previous item 8, and removing item 4.

*(d) Tie Breaker Criteria. In the event that two or more Applications receive the same number of points in any given set-aside category and region and compare equally under the factors described in subsection (c) of this section, the Department will utilize the factors in paragraphs (1) through (9)(10) of this subsection, in the order they are presented, to determine which Development will receive a preference in consideration for a tax credit commitment. As described by these paragraphs, preference in recommending credits for allocation will be given to Developments which ~~ensure that credits recommended for allocation to the Development which are practicable~~ and economically feasible, and which: ~~v:~~*

- (1) serve persons with the lowest percentage of area median family income;*
- (2) serve low income tenants for the longest period of time, in the form of a longer Compliance Period and/or extended low income use period (as set forth in the LURA);*
- (3) is located in a Qualified Census Tract, the development of which contributes to a concerted community revitalization plan;*
- (4) is a Special Housing Development as defined in §49.2 of this title;*
- (45) has substantial community support as evidenced by the commitment of local public funds toward the construction, rehabilitation and acquisition and subsequent rehabilitation of the Development or use other funding sources to minimize the amount of subsidy needed to complete the Development;*
- (56) provides for the most efficient usage of the low income housing tax credit on a per Unit basis;*
- (67) has a Unit composition that provides the highest percentage of three bedrooms or greater sized Units;*
- (78) provides integrated, affordable accessible housing for individuals and families with different levels of income;*
- (89) provides the greatest number of quality residential units;*
- (910) in the case of Applications involving preservation, support or approval by an association of residents of the multifamily housing development will be considered.*

#### **§49.7(e) Proposed Threshold Criteria**

**Comment:** A threshold criteria should be adopted that all applications must guarantee that rents are at least ten percent less than comparable private market rents. For this to occur, the market study must be prepared by an independent third party having no identify of interest, and should demonstrate that each unit type within the subject property will be at least 10% below the same unit type in the weighted average of the three comparable rental properties. It was suggested that this threshold could be waived by the Executive Review Committee in unusual circumstances.

**Department Response:** Because this issue would be highly debated, the Department does not feel that adding it to the 2002 QAP at this points would allow for adequate public input, and will consider its inclusion in the 2003 QAP.

#### **§49.7(e)(3)(A) Amenity Threshold**

**Comment:** It was suggested that Developments receiving any type of financing from TxRD should be included with those properties only needing to have two of the amenities. Due to the smaller nature of the projects as well as the limited funds, they will more closely resemble the 36 unit or less developments and preservation developments. Several comments were also made asking that washer/dryer hook-ups in the units, or the installation of washer/dryers in the unit, should satisfy the laundry room amenity.

**Department Response:** Staff agrees that TxRD developments, which are traditionally smaller and more spartan than the larger metropolitan developments, should be permitted to have only two amenity requirements. For consistency with the other changes made relating to the removal of Special Housing Developments, the phrase Special Housing Developments is being removed from this exhibit. The initial intent of removing the “and/or” clauses relating to washer/dryer hook-ups and the laundry rooms was to preclude developers from building a development that only had washer /dryer hook-ups in the units and no laundry room, thereby placing a burden on the tenant to either buy or rent a washer/dryer to have the opportunity to do laundry on the premises. While staff still has this concern, based on public comment as well as feedback from the Compliance Division, it is suggested that the “and/or” feature be reinstated because to remove it may act as a disincentive for developers to provide the hook-ups, thereby hurting the tenants that do have their own washer/dryer or utilize the space for storage. The Compliance Division has indicated that some developers have been charging tenants a “hook-up” fee for using a washer/dryer that is not directly rented from the complex, thereby financially penalizing a tenant for having their own equipment. The Compliance Manual is currently being updated to prohibit this practice, and to affirm this policy, that language has also been added to the QAP.

(A) A description of the type of amenities proposed for the development. If fees in addition to rent are charged for amenities reserved for an individual tenant's use (i.e. covered parking, storage, etc.), then the amenity may not be included among those provided to complete this exhibit. Developments with more than 36 units must provide at least four of the amenities provided in clauses (i) through (viii) of this subparagraph. Developments with 36 Units or less, Developments receiving funding from TxRD-USDA, ~~Special Housing Developments~~ and Preservation Developments must provide at least two of the amenities provided in clauses (i) through (viii) of this subparagraph. Any future changes in these amenities, or substitution of these amenities, may result in a decrease in awarded credits if the substitution or change includes a decrease in cost or in a cancellation of a Commitment Notice or Carryover Allocation if the Threshold Criteria are no longer met.

*(i) full perimeter fencing with controlled gate access;*

*(ii) designated playground and equipment;*

*(iii) community laundry room and/or laundry hook-ups in Units (no hook-up fees of any kind may be charged to a tenant for use of the hook-ups);*

*(iv) furnished community room;*

*(v) recreation facilities;*

*(vi) public telephone(s) available to tenants 24 hours a day;*

*(vii) on-site day care, senior center, or community meals room;*

*(viii) computer facilities.*

#### **§49.7(e)(3)(B) Code Certification**

**Comment:** The Director of the Southern Building Code Congress International, Inc. (SBCCI) wrote to provide clarification regarding the code language currently being utilized by the Department. The current reference to the Southern Building Code or National Building Code is outdated and should instead state the “International Building Code,” which is a universally accepted standard for building.

**Department Response:** The Department concurs that bringing the QAP language up to date with current building code standards is prudent.

(B) A certification that the Development will adhere to the Texas Property Code relating to security devices and other applicable requirements for residential tenancies, and will adhere at a minimum to the International Building Code~~Southern Building Code or National Building Code~~ as it relates to access, lighting and life safety issues.

#### **§49.7(e)(3)(C) Federal Law Certification**

**Comment:** There is a difference between 2606.6722 of SB322 which says that any development supported by tax credits must comply with Section 504, and Section 2306.257 which states that the applicant must be in compliance with specific federal regulations including ADA. The comment emphasized the difference

between a Development (which now must be built in compliance with 504) and an Applicant (who is prohibited from receiving tax credits if they have a history of violating the specific list of civil rights or accessibility standards). This difference is important because ADA does not apply to multifamily housing. The proposed resolution to this disparity is to include the exact language of the bill into this paragraph (C). It was also suggested that the language “to the extent applicable” be included since various types of entities may have previously been required to comply with different standards.

**Department Response:** The split between the federal regulation certification and the §504 certification is already integrated by splitting these two items into subparagraph (C) and subparagraph (E). To ensure that the meaning of the bill is captured in the QAP, and that we are referring to an Applicant being in compliance with laws as an existing entity, the clarification was made below in consistency with §2306.257 of SB322. However, the language “to the extent applicable” is not in SB322, and allows a measure of flexibility that the legislature may not have intended. The inclusion of that phrase is not suggested by staff.

(C) A certification that the Applicant is in compliance with ~~will comply with~~ state and federal laws, including but not limited to, fair housing laws, including Chapter 301, Property Code, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. Section 3601 et seq.), and the Fair Housing Amendments Act of 1988 (42 U.S.C. Section 3601 et seq.); the Civil Rights Act of 1964 (42 U.S.C. Section 2000a et seq.); the Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.); and the Rehabilitation Act of 1973 (29 U.S.C. Section 701 et seq.)

#### **§49.7(e)(3)(D) Historically Underutilized Businesses/Minority Businesses**

**Comment:** This issue is one of the more controversial items in the QAP. First, there is concern that HUB reporting every 90 days is excessively burdensome. We also received several comments that this requirement is particularly burdensome on developments in rural areas where the subcontractors are often small family-owned businesses that have never applied for HUB certification. For those areas, there may need to be a best effort escape clause if HUB subcontractors cannot be found. It was also suggested that this requirement should be passed on as a burden to the general contractor since the contractor is the one who will be hiring the construction subcontractors. However, there was some support for using the HUB certification because it is a standardized process.

Another recommendation emphasizing that §2306.6734 of SB322 does not require proof of HUB certification at application, and that applicants should attempt to ensure that at least 30% of construction and management business is contracted to minority owned businesses, not HUBs. Because at the time of application subcontractor agreements will not have been formalized, the Department should merely certify that they will attempt to ensure minority participation. This comment provided a reworking of the first sentence of this exhibit and suggested the use of an Agency prescribed form. Regarding the management component, there is only one management company so how will that be accounted for?

Many concerns were voiced regarding how the Department would define “attempting to ensure,” how this requirement would be enforced, and if the provision was even constitutional.

**Department Response:** The Department is recommending that the exhibit be revised to remove the reference to HUBs and replace it with Minority Owned Businesses. A definition for Minority Owned Business is also added to §49.2 to accommodate this change.

(D) A certification that the Applicant will attempt to ensure that at least 30% of the construction and management businesses with which the Applicant contracts in connection with the Development are Minority Owned Businesses HUBs, and that the Applicant will submit at least once in each 90-day period following the date of the Commitment Notice a report, in a format proscribed by the Department and provided at the time a Commitment Notice is received, on the percentage of businesses with which the Applicant has contracted that qualify as Minority Owned Businesses HUBs..



### §49.7(e)(3)(E) Accessibility Features in Townhome Units

**Comment:** This exhibit reflects a debate regarding visitability versus livability. The advocacy community has been outspoken in their comprehensive support of §504 and the requirement to have one bedroom and one bathroom downstairs in all Townhome Units, which allows a disabled tenant to actually live in the unit.

The counter-argument, also well supported, is that visitability should be the goal, which would require only one bathroom downstairs for visiting disabled guests, and remove any language relating to a bedroom downstairs on any Units. The main purpose for this counter-argument is that developers find it infeasible to develop any type of two bedroom townhome unit, because the footprint and layout is not sensible or efficient, and is more costly. This ruling will in effect eradicate the town home design in tax credit developments. Last year there was a discrepancy between the actual language of the QAP and its interpretation. So while the QAP said all units, it was interpreted to mean 5% of all tax credit units. Several comments asked that we clarify that for this year we specifically did mean only 5% of tax credit units; and one commenter was “willing” to increase this to 10% as long as it was not all units. One compromise suggestion was to require that each developer ensure that at least 25% of its units are adaptable and visitable.

The two groups have met and at this point, are unable to agree on a compromise. Another comment was made that we should specify ‘two-story dwelling units’ which would be more specific.

**Department Response:** While there are cogent points made by each constituency, staff concur with the disabled community in placing an emphasis on improving livability options in tax credit developments. The advocacy community fought for this requirement in the 2001 QAP and the Department should not step back from this previous level of commitment. A clarification regarding two-story dwelling Units is a good revision that provides further clarification; that change is proposed by staff.

(E) A certification that the Development will comply with the accessibility standards that are required under Section 504, Rehabilitation Act of 1973 (29 U.S.C. Section 794), and specified under 24 C.F.R. Part 8, Subpart C. This includes that for all Developments, a minimum of five percent of the total dwelling Units or at least one Unit, whichever is greater, shall be made accessible for persons with mobility impairments. A Unit that is on an accessible route and is adaptable and otherwise compliant with sections 3–8 of the Uniform Federal Accessibility Standards (UFAS), meets this requirement. An additional two percent of the total dwelling Units, or at least one Unit, whichever is greater, shall be accessible for persons with hearing or vision impairments. Additionally, for Developments designed as Townhomes or other two-story dwelling Units, the Applicant must include one bedroom and one bathroom on the ground level of all Units (this includes market rate and tax credit Units), and meet Fair Housing standards. At the construction loan closing a certification from an accredited architect will be required stating that the Development was designed in conformance with these standards and that all features have been or will be installed to make the Unit accessible for persons with mobility impairments or persons with hearing or vision impairments. A similar certification will also be required after the Development is completed.

### §49.7(e)(3)(F) Minimum Standard Energy Saving Devices

**Comment:** The Department was praised for including new energy efficiency minimum standards into the tax credit program. Multiple comments were made regarding ways to improve the Minimum Standard Energy Saving Devices language and make it more realistic and feasible. One comment asked that we clarify that the roof decking is to have a radiant barrier and several indicated that “if recessed lighting is used,” then it must be either compact fluorescent or fluorescent tube lights. One comment was also made that R-15 insulation is difficult and expensive to squeeze into a 2x4 wall and will actually have less energy efficiency than a properly installed R-13 insulation; and that R insulation and R rated wall construction are two different things. Conversely, many developers did not indicate the insulation to be a problem. Also, most heat loss is through the ceilings and so R-36 ceiling insulation is suggested for extra points. Comments also pointed out that these minimum standards may be difficult if not impossible for certain rehabilitation or preservation developments to accomplish. For example, it is difficult to locate original plans and the

applicant may not be able to determine if the water pipes in the slab have been insulated. One comment suggested that all water pipes, whether in slab or not, shall be insulated. Several others suggested that the insulated water pipes in slab be removed altogether because it is unclear, and the insulation of water pipes is not necessarily a considerable energy savings device. Comment was also made that the Energy Star Heating and cooling systems are not typical of the El Paso area and that evaporative coolers are the standard there because of their energy efficiency and the dry climate.

**Department Response:** This year was the first year the Department integrated a minimum energy efficiency standard into the QAP rules. We had been eager to receive comment on this item so that the exhibit would be both energy efficient and fair, while not being excessively costly. Based on the comments above, staff concurs with the clarification regarding roof decking and recessed lighting. Because only one comment was made regarding the insulation, staff felt that overall the development community did not feel that this was infeasible or excessive. No change on that feature is suggested. The comment regarding points for extra ceiling insulation is noted; the Department intends to integrate the basic proposed energy efficiency threshold with the 2002 QAP, and strive for the 2003 QAP to develop “extra” point based efficiency items. Because of the varying comments regarding the insulated pipes, staff suggests removing that item and researching it further for possible inclusion in the 2003 QAP. In light of that removal, there do not seem to be any other items on this list that would be a conflict for rehabilitation or preservation developments; no specific exceptions are proposed for those developments. Staff concur with the option of using evaporative cooling systems in dry climate areas.

(F) A certification that the Development will adhere to the Department’s Minimum Standard Energy Saving Devices in the construction of each tax credit Unit identified in clauses (i) through (vii) of this subparagraph, and that all Units must be air-conditioned. The devices must be certified by the Development architect as being included in the design of each tax credit Unit prior to the closing of the construction loan and in actual construction upon Cost Certification.

(i) Wall insulation at a minimum of R-15. Ceiling insulation at a minimum of R-30. ~~Roof decking to have Radiant barriers;~~

(ii) Energy Star rated heating and cooling systems, ~~or in dry climates an evaporative cooling system may replace the Energy Star cooling system;~~

(iii) All appliances installed, including water heaters, to be Energy Star rated;

(iv) Maximum 2.5 gallon/minute showerheads and maximum 1.5 gallon/minute faucet aerators;

(v) Insulate all water pipes in slab;

(vi) If used, natural gas heating systems must have a minimum energy factor of 0.85; and

(vii) If recessed lighting is used, it must use ~~Reecessed lighting to be either compact fluorescent lights or fluorescent tube lights.~~

#### **§49.7(e)(4)(C) Exhibit 102C – Cost of Syndication**

**Comment:** Because the documentation requested on the exhibit form is, at best, a good estimate at the time of application, it is unnecessary. Furthermore, many housing authorities must issue public Requests for Proposals in order to choose investors and with a public RFP process you can be fairly sure that the winning proposal will be based upon industry-standard syndication load, so the form should not be required.

**Department Response:** SB322 requires in §2306.6705 that specific information relating to syndication must be obtained in an application. That required information is included in this exhibit and form. No changes are proposed.

#### **§49.7(e)(5)(B) Exhibit 103B - Zoning**

**Comment:** The question was asked why it is required that the Applicant agree to release the city if zoning is denied? If zoning is denied for reasons that violate federal or state law, the city should not be released. This issue is covered by other laws and should not be the subject of the QAP.

**Department Response:** The sentence with the “hold harmless” clause was taken verbatim from §2306.6705(5) of SB322. No changes are proposed.

#### **§49.7(e)(5)(D) Exhibit 103D – Interim and Permanent Financing**

**Comment:** The first paragraph reads that the Total Development Costs must be covered by the permanent financing and the credits, but that is not always the case. It was observed that the application asks for proof of application for other TDHCA sources of funds, but that Department then needs to be certain that the application cycles for those programs are synchronized.

**Department Response:** Clarification to the language is provided relating to Total Development Costs. Regarding the application for other funds, the exhibit already addresses this concern. It states in Exhibit 103D(iii) that, “While evidence of application for funding from another TDHCA program is not required (as these funds will be presented to the Board concurrently with the recommendation for tax credits), the Applicant must clearly indicate that such an application has been filed as required by the Application Submission Procedures Manual.”

(D) Exhibit 103D. Evidence of interim and permanent financing sufficient to fund the proposed Total Housing Development Cost less any other funds requested from the Department and any other sources documented in the Application. Such evidence must be consistent with the sources and uses of funds represented in the Application and shall be provided in one or more of the following forms described in clauses (i) through (iv) of this subparagraph:

#### **§49.7(e)(6)(B) Exhibit 104B – Notice to Local Officials**

**Comment:** Because the notices to officials are part of the Pre-Application requirements, it was suggested that we clarify the age requirement of the document as it relates to the Pre-Application deadline.

**Department Response:** The language already clearly states that the “Proof of notification should not be older than three months from the first day of the Application Acceptance Period.” As the first day of the Pre-Application Acceptance Period is the same as the first day of the Application Acceptance Period (December 4), the existing language is appropriate. No changes are proposed.

#### **§49.7(e)(6)(D) Exhibit 104D – Public Housing Waiting List**

**Comment:** The notification to public housing authorities is unnecessary because the person making the comment had never yet placed an applicant off of the public housing wait list, and that the public housing authority contacts don’t want to work with the development owners.

**Department Response:** The Department is committed to sharing information about our developments and their potential as a housing resource for low income members of communities. While some applicants may feel that this is an unnecessary task that does not result in any tenants, the notification letters are a simple requirement that place no undue burden on an applicant. If they result in even a few referrals that allow a low income person to learn about the tax credit program, then it was worth this simple requirement.

#### **§49.7(e)(7)(B) Exhibit 105B – Documentation of Good Standing**

**Comment:** The requirement for a Good Standing Certificate should be revised. Many entities are formed without ever having requested a name reservation certificate. The provision should be revised to state that

for entities formed within five months of the date of application, a Good Standing Certificate is not required. If an Applicant or GP has been formed for more than five months from the date of filing the application, then either a Certificate of Good Standing for corporations or a Certificate of Existence must be obtained from the Secretary of State.

**Department Response:** The requirements of this section were already simplified from the 2001 QAP. As only one comment was made regarding this item, it seems the majority of the development community did not have a problem with this requirement. The Department feels that these are very basic requirements that do not ask too much from an Applicant. No changes are proposed.

#### **§49.7(e)(9) Exhibit 107 – Nonprofit Threshold Requirements**

**Comment:** Regarding clause (vii), a comment was made that Section 42 does not require that nonprofit entities applying as Qualified Nonprofit Organizations for the federal set-aside be local (having a majority of their board within a certain radius of the site), and that this therefore discriminates against out-of-state nonprofit entities with substantial experience. Another comment also suggested that clause (vii) be deleted in its entirety. It was suggested that this rule may violate the interstate commerce clause of the US Constitution. It was also requested that under clause (vi), eligibility should not be contingent on the nonprofit being the managing partner of the LP or LLC, but that the partnership need only be controlled by the nonprofit. Another comment asked that the phrase “home addresses” be removed from clause (v). The requirements relating to documentation for nonprofits not applying in the set-aside should be minimized or eliminated.

**Department Response:** The requirements for nonprofit documentation are generated from SB322. Clause (vii) was taken verbatim from §2306.6706(9) of SB322. The only addition was the term “in the form of a certification” which is the means by which the Department has determined to gather this information. In clause (v) the requirement for home addresses also comes from §2306.6706(7) of SB322. The requirement that the nonprofit organization must be the managing general partner if the organization is filed on behalf of a limited partnership is also taken from §2306.6706(b). Based on the requirements of the legislation no changes are proposed.

#### **§49.7(e)(11)(A) Financial Statements**

**Comment:** The Department should require, via the Financial Statements, that Applicants, members of a GP, or managing members of an LLC, must show a combined net worth and cash requirement as determined by a financial statement prepared by a CPA. The minimum net worth and asset/cash requirements were in ranges based on the number of units in the development. The low end for developments with 1 to 76 units was \$50,000 in net worth and \$10,000 in cash/ assets, and the high end for over 200 units was \$500,000 in net worth and \$50,000 in cash/assets.

**Department Response:** The establishment of net worth and cash requirements by the tax credit program is not suggested by staff for two reasons. First, a tax credit deal is a business deal in which syndicators and lenders are also involved. If a syndicator and/or lender think an entity’s net worth and cash requirements are substantial enough, the Department should not determine otherwise. Second, this requirement would unduly burden nonprofits and smaller developers/applicants who either have limited assets/net worth and/or who are currently not required to submit a CPA-prepared statement. No changes are proposed.

#### **§49.7(e)(12)(D)(ii) Filing of Market Studies and Environmental Studies**

**Comment:** There is confusion that the due date of the reports is March 29, 2002, but that March 29 is also the Application due date. Another comment was also made indicating that the time frame from the release

of pre-application results to the application due date is too short to generate professional reports and that the time should be extended.

**Department Response:** Both comments are addressed already in the existing language. The due date for the applications is March 1. The reports being due March 29 allows approximately one extra month from the application due date (and therefore almost two months from the release of pre-application information) for the professional reports to be generated. Under the time frames this was the longest amount of time the Department was able to identify. No changes are proposed.

#### **§49.7(f) Selection Criteria (General)**

**Comment:** Several comments were made suggesting the addition of new selection criteria that were not previously included in this section. One comment suggested awarding points for site features and amenities. Examples of site scoring items included giving points for a site where at least 80% of the site would have slopes less than 12%, for proximity to amenities distinguishing between family and elderly, and for utilities provided at the site. Another suggestion was that developers should be competing on the basis of their cost efficiency, measured possibly in credits per unit. One proposed exhibit would award points for excellent compliance records with the Department. Another comment pointed out that on some of the exhibits, an exhibit number is listed, but there is not a documentation requirement to go along with it and therefore does not need an exhibit number, and that there may be places where documentation is required, but no exhibit number is provided. With the QAP moving increasingly to being strictly point-based, it seems that allocations will all end up going to developments in qualified census tracts. To prevent that it was suggested that an application receiving points for QCTs should not be eligible for mixed income points.

**Department Response:** The concept of awarding points for site features and amenities has been discussed over the years and while it may have certain merits, it remains a very subjective criteria. The variations in sites and in the reviewer's judgement about the sites would be hard to re-duplicate and may unduly penalize sites involving urban infill or revitalization, as well as penalizing rural developments not located near amenities. The emphasis of SB322, and the Department, is to see the tax credit program become less subjective. At this time, adding a point structure for something like site, may work against that goal.

The issue of scoring based on cost efficiency has also been heavily debated. While on the one hand, it rewards those developments for minimizing costs and maximizing credits, on the other hand it discourages the inclusion of amenities and features that the tax credit program has been encouraging. Because this issue would be highly debated, the Department does not feel that adding it to the 2002 QAP at this points would allow for adequate public input. The concept of awarding points for excellent compliance records was also debated. While no consensus on this was reached, the Department will revisit this suggestion for the 2003 QAP. Staff did not feel that QCT points should be mutually exclusive of mixed income points. If the evaluation of the 2002 cycle indicates that a predominance of allocations are going to QCTs, the Department will consider the impact of that in developing the 2003 QAP. Finally, regarding the proper location of exhibits and their numbers, staff is making those necessary changes as the QAP is finalized.

#### **§49.7(f)(1)(F) Location Ratios**

**Comment:** Several comments were made that the ratios should not be applied city-wide, but should be applied by comparable type of unit. The ratio should not include units more than 10 years old as comparable. If a city or county has an eight year old elderly development, and has strong need for family units, it would be a disservice to the city or county that the development would not receive the full points.

**Department Response:** In general, the Department supports the line of reasoning behind these comments. Unfortunately, at this time, the data is not available in a manner that would allow the running of these ratios by development type. Therefore, the option is to either maintain it as drafted or delete the selection. Staff

suggests maintaining the exhibit as drafted because the Department relies on this exhibit to do two things. The first is to make sure that areas that have never received a tax credit since the inception of the program (of any type), have a slight advantage (2 points) over another city where tax credits have been awarded (even if it is of a different type). A city or town with only one eight-year old tax credit is typically not going to have a ratio that precludes it from receiving two to four points for this exhibit. The second purpose of this exhibit is to make sure that cities with a disproportionate amount of credits per capita are penalized to some degree for having been awarded an overwhelming number of tax credit units. Regardless of type, the Department questions continuing to distribute credits to a city with a high ratio, when there are some cities in the state with absolutely no credits. With the state's limited resources, this exhibit rewards an applicant for going to an area where very few or no tax credits have been awarded and spreading the allocation across the state. To remove the exhibit altogether would remove a very valuable scoring tool. No changes are proposed.

### **§49.7(f)(3) Community Support**

**Comment:** Many members of the House and Senate do not take a position on tax credit developments and will not send letters of support. The suggestion was to treat the receipt of support letters, or no letter, neutrally; and deduct one point if legislative letters are submitted in opposition to a project. The current proposal implies that allocations are a political decision. It was also suggested by several persons that the points awarded should be removed altogether because it may cause problems with civil rights laws by effectively giving neighborhoods and neighborhood organizations the power to exclude low income housing from their community and use the “not in my back yard” tactic. One comment asked that the term “the area” be specified as it relates to the geographic area served by the civic organizations and another suggested that three letters was an excessive quantity since many neighborhoods only have one organization, if that. Another comment merely suggested integrating the neighborhood/civic points into the previous paragraph so that all of the support points are together. Another item suggested that the language for the points should be worded to match the point language in paragraph (B). One comment also asked for clarification on the points for paragraph (B)(ii) because it implies that you could get less than 2 points, in some way, with partial documentation.

**Department Response:** Under §2306.6710, SB322 clearly states, “...the department shall score and rank the application using a points system based on criteria that area adapted to regional market conditions and adopted by the department, including criteria regarding...the level of community support for the application, evaluated on the basis of written statements of support from local and state elected officials representing constituents in areas that include the location of the development...” Under §2306.6725, SB322 states, “In allocating low income housing tax credits, the department shall score each application using a point system based on criteria adopted by the department that are consistent with the department’s housing goals, including criteria addressing the ability of the proposed project to...demonstrate community and neighborhood support as defined by the qualified allocation plan...” Based on these excerpts from the bill, it is clear that the Department has to give points for each of these categories.

Staff does not feel that a specific definition for “area” is needed because to limit the area of support by a radius of miles, or some similar method, may disqualify letters of support from civic organizations that are city-wide, but do not office nearby, or may negatively affect rural areas. Staff does not recommend integrating these points into the prior paragraph – each of the types of support letters stand alone as a sub-exhibit of exhibit 202. Staff recommends reducing the number of letters to two to better accommodate areas where there is limited civic involvement/neighborhood organization. The revision was made for the language regarding points to better match the verbiage for the points in (A) and (B). Staff also recommends the revision to the point language on (B)(ii).

(B)(ii) from the Mayor, County Judge, City Council Member, or County Commissioner indicating support; or a resolution from the local governing entity indicating support of the Development (~~maximum of 2 points~~)

(C) Points will be awarded based on the written statements of support from neighborhood and/or community civic organizations for areas that encompass the location of the Development. Letters of support must identify the specific Development and must specifically state the organization's support of the Development at the proposed location. This documentation must be provided as part of the Application. Letters of support from organizations that are not active in the area including the location of the Development will not qualify for points under this Exhibit. Letters of support received after the close of the Application Acceptance Period will not be accepted for this Exhibit. ~~If three or more letters are provided, two points will be awarded.~~ (1 point each, maximum of 2 points).

#### §49.7(f)(4)(A) Unit Size

**Comment:** It was requested that the unit sizes be adjusted. Comments on revising the square footage tended to be based on developer's researching the average dwelling unit sizes in their existing developments or in the market. Comments also indicated that because rehabilitation unit sizes are already determined, and that those primarily will be below these requirements, rehabilitation deals will be ineligible for all of the points in subparagraphs (D) through (H), which would be a devastating impact for those applicants. Furthermore, these square footages would have a similarly detrimental effect on preservation, rural and senior deals. If these minimums are kept, senior deals would definitely need an adjustment, since in multi-story elderly developments more space is put into community spaces and corridors. For TxRD funded projects there is a conflict because Farmer Home maximums are less than our minimums, making all TxRD deals ineligible for the subsequent points. There was considerable support for the deletion of the minimum unit sizes entirely because there are too many factors involved in housing to have a basic universal minimum, and increasing sizes will only drive up costs. From those persons not suggesting deletion, the sentiment was to make the minimum sizes applicable only to new construction, with a factor for elderly. One comment was received in support of the proposed unit sizes, arguing that we should not confine people in spaces that are inappropriate just because they are poor. Two comments also asked that we identify square footage for studio/efficiency units (400 square feet was proposed).

**Department Response:** The Department is cognitive of the many factors influencing different developments. However, §2306.6710(b) of SB322 states that, "if an application satisfies the threshold criteria, the department shall score and rank the application using a point system based on criteria that are adapted to regional market conditions and adopted by the department, including criteria regarding...the size, quality and amenities of the units." The directive to create a scoring component relating to unit size is clear. Staff does suggest, based on comments provided, to draft the language to accommodate for the many valid concerns relating to unit size concerns for elderly, rehabilitation and TxRD developments. The unit sizes for new construction are not excessive and provide a livable space for tenants, and therefore are not being proposed for change. An additional category was added for efficiencies, however the Department thought 400 square feet was too small for a comfortable living space and included a 500 square foot minimum.

*(4) Development Characteristics. Developments may receive points under as many of the following subparagraphs as are applicable. This minimum requirement does not apply to Developments involving rehabilitation or Developments receiving funding from TxRD-USDA. To qualify for points under subparagraphs (D) through (H) of this paragraph, the Development must first meet the minimum requirements identified under subparagraph (A) of this paragraph.*

(A) Unit Size. The square feet of all of the units in the Development, for each type of unit, must be at minimum:

(i) 500 square feet for an efficiency unit;

(ii) 750 square feet for a non-elderly one bedroom unit; 650 square feet for an elderly 1 bedroom Unit;

(iii) 900 square feet for a two bedroom unit;

(iv) 1,000 square feet for a three bedroom unit; and

(iv) 1,100 square feet for a four bedroom unit.

#### §49.7(f)(4)(D) Exhibit 205 – Units for Families

**Comment:** Comment was made that the restrictions on units for families should be exempt for TxRD deals because a number of the properties in their portfolio needing rehabilitation have less square footage. It was also noted that studio and one-bedroom units should be permitted, and that the square footage on the 4-bedroom Units exceed the minimums in paragraph (A). (14)(30)

**Department Response:** The Department does not wish to discourage preservation and rehabilitation developments by including criteria items that are infeasible for the rehabilitation of TxRD developments. However, any new funding should not be exempt from these minimum requirements to receive the points. The intent of these points is to create an incentive for developments designed specifically to cater to families. With that in mind, the points do not apply to smaller units not serving families. To include the smaller units in the calculation for the points would defeat the concept of the exhibit. Likewise, the higher square footage on the four bedroom unit is set to ensure that a family unit is slightly larger than the program minimum. No changes on the smaller units or square footages are suggested. Drafted language follows.

(D) ~~Exhibit 205~~. Development provides Units for housing individuals with children. To qualify for these points, these Units must have at least 2 bathrooms and no fewer than three bedrooms and at least 1000 square feet of net rentable area for three bedroom Units or 1200 square feet of net rentable area for four bedroom Units; these Unit size and bathroom requirements are not required for Developments involving rehabilitation to be eligible for the points below . Unless the building is served by an elevator, 3 or 4 bedroom Units located above the building's second floor will not qualify for these points. If the Development is a mixed-income development, only tax credit Units will be used in computing the percentage of qualified Units for this selection item.

(i) 15% of the Units in the Development are three or four bedrooms (5 points); and

(ii) an additional point will be awarded for each additional 5% increment of Units that are three or four bedrooms up to 30% of the Units (a maximum of three points) (3 points).

#### §49.7(f)(4)(E) Costs per Square Foot for New Construction Only

**Comment:** It was strongly recommended that this entire requirement be deleted because measuring cost per square foot is a deterrent to the production of quality affordable housing and is difficult to track since final bids are a year or more after the application. Many of those suggesting this deletion also supported a credit cap per unit, which is proposed elsewhere. Any Applicant could receive the maximum points by using tactical methods such as the use of inferior building materials or unnecessarily increasing bedroom sizes. Also when leasing a mixed income development, you need to make sure that the entire development meets market rate standards. If this exhibit is maintained the ranges need to be widened. It was suggested that the QAP (in the definitions) specify what New Construction is for the purposes of this exhibit. The rationale is that a development undergoing major conversion or renovations would also be competitive and eligible for these points since their costs do fall within these ranges.

It was also pointed out that by making these points eligible for only new construction, it places rehabilitation, preservation and historic preservation deals at a distinct point disadvantage. A counter-balance should be provided to equalize this. The sentence regarding 5% increments does not make sense with the rest of the exhibit. Finally, it was noted that in multi-story elderly developments, corridors are not accounted for and that perhaps those figures need to be integrated into the unit calculation. It was pointed out that the initial paragraph indicates six points, but the subcategories below are at 4 points and lower.

**Department Response:** The Department integrated this item to comply with §2306.6710(b)(1) which states “if an application satisfies the threshold criteria, the department shall score and rank the application using a point system based on criteria that are adapted to regional market conditions and adopted by the department, including criteria regarding...the cost by square foot of the development.” However, the many



detrimental impacts this may have on developments is noted. Therefore, staff recommends the following which make this exhibit broad enough to minimize any negative repercussions it may have.

~~(E) Cost per Square Foot for New Construction Only.~~ For this exhibit hard costs shall be defined as construction costs, including contractor profit, overhead and general requirements. The calculation will be hard costs per square foot of net rentable area (NRA). ~~Developments will be eligible for points as identified in clauses (i) through (iii) of this subparagraph. In both instances, the points will still be calculated based on the 5% increments. The calculations will be based on the hard cost listed in Exhibit 102B and NRA shown in the Rent Schedule of the Application. (Maximum of 6 points). Developments do not exceed \$60 per square foot. (1 point).~~

~~(i) \$52 to \$54 per square foot for general new construction, \$54 to \$56 per square foot for elderly projects, or \$83 to \$85 per square foot for high-rise urban infill Developments (4 points)~~

~~(ii) \$55 to \$56 per square foot for general new construction, \$57 to \$58 per square foot for elderly projects, or \$86 to \$87 per square foot for high-rise urban infill Developments (3 points); and~~

~~(iii) \$57 to \$58 per square foot for general new construction, \$59 to \$60 per square foot for elderly projects, or \$88 to 89 per square foot for high-rise urban infill Developments (2 points).~~

#### §49.7(f)(4)(F) Unit Amenities and Quality

**Comment:** Comments on specific amenity changes included removing crown moulding, ceramic tile floors (which may also increase liability in elderly developments) and nine-foot ceilings as they are costly and do not address any component of affordable housing. The higher ceilings also will increase utility bills, so the amenity may not be “affordable” for the tenant at all. One comment did support points for ceramic floors. It was suggested that these items should be replaced by adding laundry connections, storage area and covered parking which are in the realm of affordable housing need. The need for cabinetry depends on the number of occupants in a unit and the type of housing: elderly may need less, while families need more. The cabinetry requirement may negatively affect the accessibility of the unit and the linear measurement may not adequately reflect pantry space or areas where there is cabinetry above but not below (or vice versa). Therefore, it was suggested that this item be deleted. Clarification was requested regarding whether the phone line needed to be a separate second line or not. There were also requests that cementitious board products also be classified as masonry. Finally, it was suggested that the amenities need to be in all units and that there can be no additional charge.

Comment was received that pointed out the disparity between new construction and rehabilitation or rural projects in providing many of these unit features. To meet the legislative goal of providing the most housing for the least credits, there needs to be parity in scoring features. It was suggested that the standards for one bedroom and four bedroom units be different. Several comments also pointed out that this section conflicts with the requirement that the construction will be underwritten using the Average quality standards from Marshall and Swift, because the items mentioned are frequently in the Very Good category of Marshall and Swift. Either the Agency should use a higher quality standard in underwriting or each applicant should be looked at individually to determine what Marshall and Swift category to use. Because of this disparity, it is suggested that the section be deleted entirely.

**Department Response:** The Department concurs with many of the comments and was pleased to get informative constructive feedback on what amenities work in an affordable housing development. All of the requested changes listed in the first paragraph above have been made, except the language relating to there being no charge because that language already existed in the exhibit. With the removal of some of the more costly items on the amenity list, rehabilitation deals should be able to satisfy at least some of these amenity selection criteria. However, to increase parity between new construction and rehabilitation, language is proposed that adjusts points for rehabilitation developments. The QAP will address the issue of the Marshall and Swift rating categories under §49.8. The Department feels that to get points for the amenities they must be applied to all units regardless of unit size, therefore no adjustment has been that treats one bedroom units differently than four bedroom units.

(F) Exhibit ~~205206~~. Unit Amenities and Quality. Developments providing specific amenity and quality features in every Unit at no extra charge to the tenant will be awarded points based on the point structure provided in clauses (i) through (xiv) of this subparagraph, not to exceed 10 points in total. Developments involving rehabilitation will double the points listed for each item, not to exceed 10 points in total.

*(i) Lighting Package: Includes heat light and vent fans in all bathrooms and all rooms have ceiling fixtures with accessible wall switches (1 point);*

*(ii) Kitchen Amenity Package: Includes microwave, disposal, dish washer, range/oven, fan/hood, and refrigerator (1 point);*

*(iii) Covered entries (1 point);*

*(iv) Computer line/phone jack available in all bedrooms (only one phone line needed) (1 point);*

*(v) Mini blinds or window coverings for all windows (1 point);*

*(vi) Ceramic tile floors in entry, kitchen and bathrooms (2 point);*

*(vii) Crown moulding in living room (1 point);*

*(viii) laundry connections (1 point);*

*(ix) storage area (1 point);*

*(x) Laundry equipment (washers and dryers) in units (3 point);*

*(xi) Twenty-five year architectural shingle roofing (1 point);*

*(xii) Covered patios or balconies (1 point);*

*(xiii) Covered parking (2 points)*

*(xiv) ~~a minimum of 16 linear feet of kitchen cabinetry (including both top and bottom cabinets) made of either solid wood or wood laminate (2 points);~~*

*(xv) Garages (3 points);*

*(xvi) Greater than 75% masonry (including cementious board products) on exterior (3 points).*

*(xvii) ~~9 foot ceilings in living room (2 points).~~*

#### **§49.7(f)(4)(G) Density Points**

**Comment:** There was support to return the density per acre to the standards used in the 2001 QAP. Comment was also received indicating that a separate factor should be used for multi-story elderly developments. The scoring criteria favors low-density one story housing developments for the elderly and/or families, in lieu of a multi-story elderly housing facility. Multi-story structures for the elderly can easily provide for densities of more than 28 units per acre and should not be compared to family projects with densities of 24 units/acre or less. Additionally, high density urban infill or elderly projects will provide for decreased maintenance costs, more desirable site location, convenience to tenants, tighter security, and improved emergency care. Another comment supported not having separate density points for multistory elderly developments or urban infill. It was additionally proposed that the points add a category for 2 points with one more range of density, and that there be even more categories (General Family, General Elderly, High Rise Urban Infill Family, and High Rise Urban Infill Elderly).

**Department Response:** Staff sees no difficulty with returning to the 2001 QAP density figures and is suggesting that change below. Staff also concurs that one additional density category may be beneficial. The reason for the original change was that with the deletion of the Town Home points, there was concern that there would be less of an interest in doing lower density deals. However sentiment clearly indicates otherwise. To complement the reduced density points, and make sure that multistory elderly or infill developments are not penalized, revisions are proposed to accommodate those type of developments.

(G) The proposed Development provides ~~low density~~ housing density of no more than 42 Units per acre for multi-story elderly or urban infill developments and no more than 24 28 Units per acre for all other developments, as follows:

- (i) 34 Units per acre or less for multi-story elderly or urban infill developments, or 16 24 Units or less per acre for all other Developments (6 points); or*  
*(ii) 35 to 38 Units per acre for multi-story elderly or urban infill developments, or 17 ~~25~~ to 20 28 Units per acre for all other Developments (4 points); or*  
*(iii) 39 to 42 Units per acres for multi-story elderly or urban infill developments, 21 to 24 Units per acre for all other Developments (2 points).*

#### **§49.7(f)(4)(I) Mixed Income Developments**

**Comment:** It was suggested by many that the language originally in the 2001 QAP regarding the calculation of the comparable rents via the Market Study information be reinstated. It had originally been removed and integrated into item (J), however, based on overwhelming public comment, item (J) was deleted. It was widely suggested that the referenced language be relocated to this exhibit. The only alteration to the 2001 language is an exception relating to 4-bedroom units, as there is no way to measure comparable units in most submarkets. It was also separately suggested that the 95% category should be removed, and that a component should be added that allows for the “mixed income” to be a mix not with market rate units, but units at 80% of median income. This change would allow nonprofits whose mission statements preclude them from having market rate units to obtain mixed income points. One comment was also made that the original range of mixed income percentages should be reinstated.

**Department Response:** The Department, based on the overwhelming feedback regarding this item and item (J) following, concurs with the proposed changes for this exhibit. As there was little support for removing the 95% category, this language will remain, to continue the Department’s commitment to integrated housing. Regarding the mixed income points for nonprofits, the intent of the QAP is not to find a way for every type of development to get points under each selection criteria. A nonprofit is eligible for points in other areas where a for profit is not eligible, and not all nonprofits have limitations on doing market rate Units. Staff does not suggest a revision for that comment. The reinstatement of the original percentages is not supported by staff; the reason for the original change in the percentages was based on input during round tables with a diverse group of program participants. No other comments came in supporting the reversion to the original.

(I) The Development is a mixed-income development comprised of both market rate Units and qualified tax credit Units. To qualify for these points, the project must be located in a submarket where the average rents based on the number of bedrooms for comparable market rate units are at least 10% higher on a per net rentable square foot basis than the maximum allowable rents under the Program. Additionally, excluding 4-bedroom Units, the proposed rents for the market rate units in the project must be at least 5% higher on a per net rentable square foot basis than the maximum allowable rents under the Program. The Market Study required by subsection (e)(12)(B) of this section must provide an analysis of these requirements for each bedroom type shown in proposed unit mix. Points will be awarded to Development’s with a Unit based Applicable Fraction which is no greater than

- (i) 80% (8 points); or,*  
*(ii) 85% (6 points); or,*  
*(iii) 90% (4 points); or*  
*(iv) 95% (2 points).*

#### **§49.7(f)(4)(J) Points for Mixed Income – Rents below Tax Credit Limits**

**Comment:** There was wide support for the deletion of this exhibit because it is confusing. The language throughout the exhibit is contradictory – at one point referring to higher rents and elsewhere referring to lower rents. The submarket is undefined which would make the exhibit too hard to evaluate. The requirement that maximum rents be maintained throughout the compliance period is difficult to fulfill since market conditions vary over time, and would be difficult for accountant and auditors to maintain for compliance. One suggestion was that the rents below the maximum tax credit limits should correspond to regional median incomes and have medians for each region. If the exhibit is retained, it is suggested that the

percentages used for reducing the rents be reduced. Another comment suggested giving points for Applicants who set the rents at the Section 8 fair market rents.

**Department Response:** Based on the public comment this exhibit has been deleted to reduce confusion.

~~(J) The Development is a mixed income development comprised of both market rate Units and qualified tax credit Units. To qualify for these points, the project must be located in a submarket where the average rents based on the number of bedrooms for comparable market rate units are at least 10% higher on a per net rentable square foot basis than the maximum allowable rents under the Program for tax credit Units. Lease rents for tax credit Units must be maintained throughout the affordability period at the selected level less than the maximum allowable rents (less a utility allowance) for tax credit Units. Additionally, the proposed rents for the market rate units in the Development must be at least 5% higher on a per net rentable square foot basis than the maximum allowable rents for tax credit Units. The Market Study required by subsection (e)(12)(B) of this section must provide an analysis of these requirements for each bedroom type shown in proposed unit mix. Points will be awarded to Project's with a Unit based on the percentage level of rent charged less than the maximum allowable rents (less a utility allowance). Representations made for this exhibit will be incorporated into the LURA for the Development.~~

~~(i) Rents at 5% less than max allowed tax credit rent limits (5 points)~~

~~(ii) Rents at 10% less than max allowed tax credit rent limits (10 points).~~

#### **§49.7(f)(4)(K) Historic Property Designation**

**Comment:** Comment was received requesting the removal of points for a property which is located in a historic district. No reason was given.

**Department Response:** As there were no other comments supporting the deletion of this item, and no rationale was provided, staff suggests leaving this item as is. No changes are proposed.

#### **§49.7(f)(4)(L) Deferred Development Fees**

**Comment:** There was almost unanimous agreement among all public comments received that this item should be deleted. Awarding points for deferring fees reduces project financial feasibility and security, and should therefore be an underwriting issue, not a scoring issue. While every deal has substantial deferred fees, these fees act as the contingency and security for construction, rental achievement, interest overruns, and permanent loan conversion, so to encourage this fee to be smaller will only hurt the long-term success of the development, and may turn away syndicators who feel that the deal is too risky. Additionally, this would be difficult to accurately monitor, as the depiction of what fees are deferred at application may not be truly representative of what occurs. So almost all developers would claim these points, when they may not actually be following through. This leads to the question of how will adherence to this selection criteria be monitored? One comment did suggest that if this exhibit remains, it needs to restructure the percentages and allow for points for having a developer fee below the existing low end of the range. It was suggested that in lieu of this exhibit, a developer could receive points for setting aside a percentage of their paid (as opposed to deferred) developer fees into a replacement reserve for future maintenance.

**Department Response:** Based on these very cogent arguments, staff concurs with the deletion of this exhibit. The suggestion regarding replacement reserve is noted and will be considered in the drafting of the 2003 QAP to ensure that it is exposed to adequate public comment.

~~(L) Deferred Developer Fee. Applicants may receive points if the following percentage of the developer fee is deferred:~~

~~(i) 40% to 49% (4 points); or~~

~~(ii) 30% to 39% (6 points); or~~

~~(iii) 20% to 29% (8 points).~~

#### **§49.7(f)(4)(M) Other Funding – HOPE VI and Section 202/811**

**Comment:** It should be noted that HOPE VI funds were originally removed as an independent selection item, because they had been integrated into the low income targeting exhibit (215). With the simplification of exhibit 215, HOPE VI funds are no longer addressed anywhere in the QAP and comment supported that the points be reinstated. Comment was also received suggesting that points be awarded for Section 202 and Section 811 HUD grants which are highly competitive. Generally only 5 to 6 Section 202 developments are awarded in the State of Texas and it is an excellent source of leveraging. The Section 811 program enables the Department to better meet its goal of integrated housing because the concept of combining tax credits with a Section 811 grant is to ensure disabled units within a non-disabled population group. Like HOPE VI grants, these developments would be better able to reach the 30% of AMGI tenants that the Department is striving to serve, because the Section 202 and 811 programs also include a rental assistance agreement.

**Department Response:** Staff suggests reintegrating the HOPE VI points and integrating the inclusion of Section 202 and Section 811 into this exhibit.

*(M) Exhibit 208. Evidence that the proposed Development is partially funded by a HOPE VI, Section 202 or Section 811 grant from HUD. The Project must have already received the commitment from HUD. Submission of a HOPE VI, Section 202 or Section 811 grant application to HUD does not qualify a Development for these points. Evidence shall include a copy of the commitment letter from HUD indicating the HOPE VI, Section 202 or Section 811 grant terms and grant award amount (5 points).*

#### **§49.7(f)(5)(A) and (B) – HUBs and Joint Ventures**

**Comment:** It was suggested that points for HUBs should be removed now that the 30% requirement for minority owned businesses is in the Threshold Criteria. With SB322's emphasis on quality work, it seems inconsistent to award points for who one is, rather than what one can accomplish. It was requested that the QAP clarify that to qualify for HUB points, the HUB does not need to be a 51% owner of the partnership. This clarification is made for nonprofit's, but not for HUBs.

Relating to joint ventures with nonprofits, one comment indicated that the language stating that developments without control will not be eligible for the nonprofit set aside, should be altered to reflect that control for a nonprofit is a must for any set-aside per the IRS guidelines. Two comments also suggested that joint venture points be deleted altogether, since the nonprofits can freely participate in any category, and they can get points under experience by partnering with an experienced general contractor. Again, with SB322's emphasis on quality work, it seems inconsistent to award points for who one is, rather than what one can accomplish. Conversely, comment was received in support of keeping the nonprofit joint venture points.

Many comments also supported that qualified stand-alone nonprofits, under any set-aside, should be eligible for these points, and that they are being unduly penalized.

**Department Response:** While the arguments for the removal of HUB points and joint venture points may have merit, each of these factors has been a successful, well-used discriminating selection criteria.

To remove these points without adequate public discussion would be detrimental, as staff believes many parties would make comment recommending that the points stay. Staff suggests that this issue be discussed in greater detail as an option for the 2003 QAP. The QAP already indicates that a HUB does not specifically have to be a 51% owner, by stating that the HUB only needs to have, "an ownership interest in and materially participate in the Development..." No changes for comments made regarding HUBs are suggested.

Staff does not recommend that this effort at capacity building through joint ventures be deleted. Staff also disagrees with the idea that a nonprofit must have control to compete in any set-aside. In compliance with Code, any nonprofit wishing to compete in the nonprofit set-aside must be in control, but as the other set-asides are not governed by the Code, they should not preclude partnerships in which a smaller nonprofit takes a non-controlling interest in a project to gain exposure to the program. In that vein, the points for joint ventures were created specifically to enhance capacity building for nonprofits that are not experienced enough to venture into tax credit development unassisted. As with the HUB points, the points were never designed to be a nonprofit "given" and should not be altered for that purpose.

#### **§49.7(f)(5)(C) Exhibit 211 and §49.7(e)(7)(E) Exhibit 105E and– Experience of the Owner’s or General Contractor’s Experience**

**Comment:** Comment pointed out that the definition for “successful” is more stringent than in the past under the selection criteria and that the language does not provide for certification of experience as handled in the past. The question was also asked if a certificate of experience could be issued by the state to be used in all the applications of one developer, as was the case in the threshold requirement for the 2001 QAP. One suggestion was that the threshold experience should be lowered and that points should be adjusted into point ranges relative to the amount of experience based on number of units, thereby raising the level of experience to a higher degree. To emphasize this exhibit for points rewards those developers who have successfully completed developments. It was also suggested that the Development experience had to be in Texas so that out of state developers would not gain an advantage over local developers, and that the general contractor should be included for these points to be more consistent with the threshold requirement.

**Department Response:** There seems to have been quite a bit of confusion on these two exhibits as one exhibit requires a minimum threshold for Development Team experience and the other goes beyond that to award points for a more stringent level of experience specifically for the owner or general partner. Through many discussions and the comments received, staff feels that this new selection criteria exhibit is not in the best interest of the program. The Department is concerned with ensuring that all of the developers receiving an allocation meet a threshold standard. The Department should not be arbitrarily determining that after a given number of Units, someone’s experience is immediately placed in a new realm that warrants a certain number of points. Therefore, staff recommends that to alleviate confusion, simplify the process, and ensure that the basic goal of only utilizing experienced developers is met, this selection criteria should be deleted. The threshold requirement for experience should remain with a revision to increase the experience requirement to the Unit levels that were proposed in the selection criteria. The threshold standards, even increased, are not excessive and are met regularly by our applicants. To lower the standard, as suggested, would serve no purpose. Staff also disagrees with the suggestion that experience for the threshold requirement needs to be in Texas. Experience with development of residential units is universal and does not vary substantially across states and should not be eliminated from consideration.

(E) Exhibit 105E. Evidence that the Development Owner's general partner, partner (or if Applicant is to be a limited liability company, the managing member) General Contractor or their principals have a record of successfully constructing or developing residential units or comparable commercial property (i.e. dormitory and hotel/motel) in the capacity of owner, general partner, managing member or General Contractor. If the General Contractor’s experience is being claimed for this exhibit, then the Development Owner must request the Department’s approval prior to replacing the General Contractor. If rehabilitation experience is being claimed to qualify for an Application involving new construction, then the rehabilitation must have been substantial and involved at least \$6,000 of direct hard cost per unit.

(i) *The term "successfully" is defined as acting in a capacity as the general contractor or developer of:*

(I) at least 150 ~~400~~ residential units or comparable commercial property; or

(II) at least 75 ~~36~~ residential units or comparable commercial property if the Development applying for credits is a Rural Development.

(ii) *Evidence must be one of the following documents:*

(I) A certification from the Department that the Person with the experience satisfies this exhibit. Applicants who have previously applied for a Tax Credit Allocation must request this certification at least seven days

prior to the beginning of the Application Acceptance Period. Applicants should ensure that the individual whose name is on the certification appears in the organizational chart provided in Exhibit 105A. If the certification is for the General Contractor, then this should be clearly indicated on the document.

(II) If the Department has not previously certified that the experience of the Development Owner, general partner, managing member or General Contractor qualifies for this exhibit, then one of the following documents must be submitted: American Institute of Architects (AIA) Document A111 - Standard Form of Agreement Between Owner & Contractor, AIA Document G704 - Certificate of Substantial Completion, IRS Form 8609, HUD Form 9822, development agreements, partnership agreements, or other appropriate documentation verifying that the general partner, General Contractor or their principals have the required experience. If submitting the IRS Form 8609, only one form per Development is required. The evidence must clearly indicate:

*(-a-) that the Development has been completed (i.e. Development Agreements, Partnership Agreements, etc. must be accompanied by certificates of completion.);*

*(-b-) that the names on the forms and agreements tie back to the ownership entity, general partner, general contractor and their respective principals as listed in the Application; and*

*(-c-) the number of units completed or substantially completed.*

~~(C) Exhibit 211. Development Team Experience with Tax Credit Development. Evidence that the Development Owner's general partner, partner (or if Applicant is to be a Limited Liability Company, the managing member) or their principals have a record of successfully constructing or developing affordable residential units in the capacity of owner, general partner or managing member. If rehabilitation experience is being claimed to qualify for an Application involving new construction, then the rehabilitation must have been substantial and involved at least \$6,000 of direct hard cost per unit (4 points).~~

~~(i) The term "successfully" is defined as acting in a capacity as the general partner (or Managing Member) or developer of:~~

~~(I) at least 150 units through the low income tax credit program; or~~

~~(II) at least 75 units through the low income housing tax credit program if the Development applying for credits is a Rural Development.~~

~~(ii) Evidence must be in the form of one or more of the following documents: American Institute of Architects (AIA) Document A111 - Standard Form of Agreement Between Owner & Contractor, AIA Document G704 - Certificate of Substantial Completion, IRS Form 8609, HUD Form 9822, development agreements, partnership agreements, or other appropriate documentation verifying that the general partner, General Contractor or their principals have the required experience. If submitting the IRS Form 8609, only one form per Development is required. The evidence must clearly indicate:~~

~~(I) that the Development has been completed (i.e. Development Agreements, Partnership Agreements, etc. must be accompanied by certificates of completion.);~~

~~(II) that the names on the forms and agreements tie back to the ownership entity, general partner, general contractor and their respective principals as listed in the Application; and~~

~~(III) the number of units completed or substantially completed.~~

#### **§49.7(f)(6) Supportive Services**

**Comment:** The requirement that the owner must pay for services to get one of the points for this criteria is not necessary. Developments often partner with nonprofits that get their funding from other sources and intend to serve the residents as part of their mission and at no cost to the owner. Another comment indicated that we should not include the point under item (vi) for coordination with state services because the state agencies are typically not willing to sign letters, but do tend to provide the services that they are mandated to provide. This additional point does not create new supportive services for tenants since the state is already obligated to provide those services. A question was presented as to whether the state would provide a list of the organizations and programs under item (vi). It was also stated that the five points for services are "token services." The items that we give points for should become a minimum threshold before points would even be considered, and then points would be awarded for the provision of substantive supportive services.

**Department Response:** The purpose for the Department requiring that the Applicant must pay for the services to get a point, was that the Department wanted to make sure that the expense associated with the services was not passed on to the tenant. However, the fact that nonprofits may be providing those services with funds from other entities is a valid issue. Language has been included to address this concern, while continuing to ensure that tenants will not bear the costs. Section (iv) has been revised to integrate a certification regarding coordination with state workforce development programs in lieu of requiring letters of documentation. The Department will provide a list of these workforce programs in its Reference Manual. While the Department fully supports the proposal to totally revamp this criteria and make the supportive services more meaningful, this revision would need to involve more public comment as there will be many voices eager to give input and suggestions. The Department will ensure that this proposal is integrated into the 2003 QAP where it will get adequate public exposure.

*(6) Exhibit 212. Development Provides Supportive Services to Tenants. Evidence that the Development Owner has an executed agreement with a for profit organization or a tax-exempt entity for the provision of special supportive services for the tenants. The service provider must be an existing organization qualified by the Internal Revenue Service or other governmental entity. The provision of supportive services will be included in the LURA (up to 7 ½ points, depending upon the services committed in accordance with subparagraph (B) of this paragraph, plus two additional points pursuant to clause (vi) of subparagraph (B) of this paragraph). Acceptable services are described in subparagraphs (C) through (E) of this paragraph.*

(A) Both documents described in clauses (i) and (ii) of this subparagraph must be submitted for the service provider to be considered under this exhibit.

*(i) A fully executed contract, not more than 6 months old from the first day of the Application Acceptance Period between the service provider and the Applicant that establishes that the services offered provide a benefit that would not be readily available to the tenants if they were not residing in the Development.*

*(ii) A copy of the service provider's Articles of Incorporation or comparable chartering document.*

(B) The supportive services contract will be evaluated using the criteria described in clauses (i) through (vi) of this subparagraph. The contract must clearly state the:

*(i) Cost of Services to the Development Owner. The cost shown in the contract must also be included in the Development's operating budget and proforma. The costs must be reasonable for the benefit derived by the tenants. Services for which the Development Owner does not pay, will not receive a point for this item, except in the event that a supportive service provider is able to provide services with funds they receive from other sources. Evidence of the provider's other funding source(s) enabling the provision of service to the tenants of the proposed Development must be provided (1 point).*

*(ii) Availability of Services - The services must be provided on site or with transportation provided to offsite locations. (1 point).*

*(iii) Duration of Contract - A commitment to provide the services for not less than five years or an option to renew the contract annually for not less than five years must be provided (1 point).*

*(iv) Experience of Service Provider - The Department will evaluate the experience of the organization as well as the professional and educational qualifications of the individuals delivering the services (1 point).*

*(v) Appropriateness - Services must be appropriate and provide a tangible benefit in enhancing the standard of living of a majority of low-income tenants (1 point).*

*(vi) Coordination with tenant services provided through housing programs – An extra two points will be awarded for services that are provided through state workforce development and welfare programs as evidenced by execution of a Tenant Supportive Services Certification (2 points).*

(C) the services must be in one of the following categories: child care, transportation, basic adult education, legal assistance, counseling services, GED preparation, English as a second language classes, vocational training, home buyer education, credit counseling, financial planning assistance or courses, health screening services, health and nutritional courses, youth programs, scholastic tutoring, social events and activities, community gardens or computer facilities; or



(D) any other program described under Title IV-A of the Social Security Act (42 U.S.C. §§ 601 et seq.) which enables children to be cared for in their homes or the homes of relatives; ends the dependence of needy families on government benefits by promoting job preparation, work and marriage; prevents and reduces the incidence of out-of-wedlock pregnancies; and encourages the formation and maintenance of two-parent families, or

(E) any other services approved in writing by the Department.

#### **§49.7(f)(7)(A) and (B) – Special Needs Housing**

**Comment:** It was suggested that the points for elderly projects and the points for transitional housing should be reduced to no more than the points available for supportive services or HOPE VI financing. It was also suggested that applicants be eligible for a portion of points for doing only a portion of the development for transitional housing, instead of requiring 100% transitional.

**Department Response:** The Department, through the State Low Income Housing Plan, is committed to making an effort to serve its aging and homeless populations. Each of these types of developments tend to be unable to score points in some of the other more traditional areas. These points allow those developments to score competitively in the process. Unfortunately, Section 42(j)(3)(B)(iii) of the Tax Code precludes a tax credit development from having partial transitional housing. No changes are proposed.

#### **§49.7(f)(7)(C) Exhibit 215, Low-Income Targeting Points**

**Comment:** Comments were received suggesting deletion of the entire exhibit as proposed. One of the main objectives of the Sunset Commission and the legislature was to make programs more understandable. This exhibit adds confusion to the program. A more simplified exhibit was proposed in its place representing the input of many people and entities involved in the program. Other comments emphasized the language in sections 2306.6702, 2306.6710, and 2306.6725 of SB322 that indicates that the most weight should go to criteria that will result in an allocation serving the lowest income tenants. Another comment suggested that the median income levels in 8B should not be lower than the median income levels for Brownsville or McAllen MSAs. One suggestion was that in some high median income areas 30% units can be done without subsidy and therefore a subsidy should not be required to receive the points. Comment also asked that if we keep the exhibit as drafted, the Department reevaluate the math calculation involved and be clear whether percentages are used as whole numbers or as decimals. One comment thought that we should remove any exhibit relating to low income targeting.

Section (iv) also has restrictions on how to handle units with tenants exceeding limits that should be changed. A comment was made requesting the Department to limit deep targeting (below 60% of AMFI) to 30% of the LIHTC units to avoid concentrations of poverty and the inability to lease market rate units. However, several comments specifically refuted this and indicated that there should be no limit placed on the number of units at the targeted incomes nor should there be required subsidy, because the state should strive to generate as many units at 30% as possible. If maintained in the language, funding assistance, as referred to in clause (iii), should be applied for at application with the commitment coming before the awards are announced. Also the requirements for funding assistance need to involve a firm commitment and be more specific. It was proposed that different types of units must have a subsidy of a minimum amount per unit. The proposal delineated how to determine the types of funding and what the unit costs would be in determining “enough” subsidy for the points.

Comment was received representing the rural viewpoint on this exhibit. The Department should clarify that we will accept a firm Section 8 contract or rental assistance contract from USDA as evidence of meeting the 30% of AMFI documentation criteria, even though those documents may not specify the level of AMFI. USDA’s regulations state that the priority for the rental assistance is the individuals with the lowest incomes. One comment seriously questioned the need for subsection (iv) which restricts the rents to the level claimed for points. This would allow only urban properties in high income areas to garner these

points. The restriction should instead be on the amount the tenant will pay, not the total subsidy being received by the property, because ultimately the Department should care about the tenants not having to pay too much. In rural Texas, where incomes are low, it is impossible to restrict rents. Likewise, properties receiving USDA assistance are prohibited from having different rent schedules for similar size units.

Several different structures were proposed to replace the existing exhibit. One awarded points for a development serving different proportions of families at 30%, 35%, 40%, 45%, 50% and 55% of AMFI. This sample had particularly high points to ensure adherence to the SB322 requirements and had the points contingent on a 55 year extended use period. The other proposal was more simple and gave moderate points for serving different percentages of tax credit units for families at 30% and 50% only.

**Department Response:** In generating the draft QAP staff was extremely challenged on this exhibit. Staff hoped that substantial feedback and comments would come in on this exhibit and was pleased by the response. Public comment definitely supports a simpler approach to this exhibit. The language below is based on a hybrid of the different structures proposed. Staff removed any factors for double counting, while increasing the number of points for serving Units at 30% or less of AMFI for compliance with SB322. Comments regarding weighting calculations and median incomes are not applicable to this revised language. Language from previous section (iv) has been integrated, but revised, to ensure that the Department will have compliance monitoring ability on the representations made. The Department does not support a limit on the number of units that can be at 30%, nor does it support a subsidy requirement. It should be noted that HOPE VI funds were originally removed as an independent selection item because that item had been integrated into this low income targeting language. With the simplification of this exhibit, HOPE VI funds are no longer addressed and are being suggested for reintegration at Section 49.7(f)(4)(M). Language relating to length of compliance period has been integrated into §49.7(f)(8).

(C) Low Income Targeting Points. Applications are eligible to receive points under clauses (i),(ii) and (iii) of this paragraph. For purposes of calculating percentages of units, all figures should be rounded down to the nearest whole number. To qualify for these points, the rents for the rent-restricted Units must not be higher than the allowable tax credit rents at the rent-restricted AMFI level. For Section 8 residents, or other rental assistance tenants, the tenant paid rent plus the utility allowance is compared to the rent limit to determine compliance. The Development Owner, upon making selections for this exhibit will set aside Units at the rent-restricted levels of AMFI and will maintain the percentage of such Units continuously over the compliance and extended use period as specified in the LURA. For the purposes of this subparagraph (maintaining the promised percentage of Units at the selected levels of AMFI), if at recertification the tenant's household income exceeds the specified limit, then the Unit remains as a Unit restricted at the specified level of AMFI until the next available Unit of comparable or smaller size is designated to replace this Unit. Once the Unit exceeding the specified AMFI level is replaced, then the rent for the previously qualified Unit at the specified level of AMFI may be increased over the LIHTC requirements. Rent increases, if any, should comply with lease provisions and local tenant-landlord laws.

(i) Development owners selecting to set aside units for individuals and families earning less than 50% of AMFI shall receive the corresponding points listed below:

(I) 0% to 9% of tax credit Units set aside for 50% or less of AMFI (4 points)

(II) 10% to 19% of tax credit Units set aside for 50% or less of AMFI (8 points)

(III) 20% to 29% of tax credit Units set aside for 50% or less AMFI (12 points)

(IV) 30% to 39% of tax credit Units set aside for 50% or less AMFI (16 points)

(V) 40% or more of tax credit Units set aside for 50% of less AMFI (20 points)

(ii) Development owners selecting to set aside units for individuals and families earning less than 40% of AMFI shall receive the corresponding points listed below:

(I) 0% to 9% of tax credit Units set aside for 40% or less of AMFI (6 points)

(II) 10% to 19% of tax credit Units set aside for 40% or less of AMFI (10 points)

(III) 20% to 29% of tax credit Units set aside for 40% or less AMFI (14 points)

- (IV) 30% to 39% of tax credit Units set aside for 40% or less AMFI (18 points)
- (V) 40% or more of tax credit Units set aside for 40% or less AMFI (22 points)
- (iii) Development owners selecting to set aside units for individuals and families earning less than 30% of AMFI shall receive the corresponding points listed below:
  - (I) 0% to 9% of tax credit Units set aside for 30% or less of AMFI ( 8 points)
  - (II) 10% to 19% of tax credit Units set aside for 30% or less of AMFI (12 points)
  - (III) 20% to 29% of tax credit Units set aside for 30% or less AMFI (16 points)
  - (IV) 30% to 39% of tax credit Units set aside for 30% or less AMFI (20 points)
  - (V) 40% or more of tax credit Units set aside for 30% or less AMFI (24 points)

(C) Exhibit 215. Low-Income Targeting Points. Development Owner will set aside Units for households with incomes at 50% or less of Area Median Gross Income (AMGI) and will be scored based on the percentage of low income units targeted to different levels of AMGI, with different weights apportioned to the different levels of AMGI as further described in clause (i) of this subparagraph. Only rent restricted Units should be used in computing the percentage of qualified Units for this selection item. Developments located in counties or cities with median incomes below a specified amount will be eligible to increase the weight factor of this calculation, as further described in clause (ii) of this subparagraph. Developments must ensure that they are still consistent with sound underwriting practices and economically feasible when making statements regarding this exhibit. The tenants of these rent restricted units are to pay no more than 30% of the imputed income limitation committed by the Development Owner to be applicable to the Unit for rent. The income and rent limits are adjusted for household size. No more than 5% of the total number of low income units can be designated as serving tenants at or below 40% of the AMGI, and no units can be designated as serving tenants at or below 30% of the AMGI, for purposes of determining points, unless the Development also receives funding assistance as further defined in clause (iii) of this subparagraph. Furthermore, no more than 30% of all low income units can be utilized in determining points for this exhibit. Additional qualifying factors are described in clause (iv) of this subparagraph.

*(i) Structure for Determining Points by Weight.*

<u>% of Median Income</u>	<u># of Rent Restricted Units</u>	<u>% of Rent Restricted Units (a/b)</u>	<u>Weight</u>	<u>Points</u>
50%	(a)		0.50	==
40%	(a)		1.00	==
30%	(a)		2.00	==
TOTAL of rent restricted units	(b)			==

*(ii) Developments located in counties with median incomes below those listed below, for each region, will be allowed to use a weight factor of .75 instead of .50 for selecting 50% AMGI, a weight factor of 1.50 instead of 1.00 for selecting 40% AMGI, and a weight factor of 3 instead of 2.00 for selecting the 30% AMGI.*

Region 1	\$37,200
Region 2	\$34,700
Region 3	\$40,200
Region 4	\$38,900
Region 5	\$34,600
Region 6	\$41,700
Region 7	\$36,300
Region 8A	\$39,000
Region 8B	\$29,300
Region 9	\$36,200
Region 10	\$28,200

~~(iii) Funding assistance includes those items specified in subclauses (I) and (II) of this clause. To qualify for these points, the evidence of funding must be in the form of a written commitment notice from the entity providing the funding which specifies the amount of dollars committed, the number of units being subsidized and at what level of AMGI.~~

~~(I) the commitment of development funding by local political subdivisions that enables additional units for individuals and families of very low income; or~~

~~(II) private, state or federal resources, including, but not limited to, Federal HOPE VI grants received through HUD.~~

~~(iv) To qualify for these points, the rents for the rent restricted Units must not be higher than the allowable tax credit rents at the rent restricted AMGI level. For Section 8 residents, the tenant paid rent plus the utility allowance is compared to the rent limit to determine compliance. The Development Owner upon making this selection for this exhibit will set aside Units at the rent restricted levels of AMGI and will maintain the percentage of such Units continuously over the compliance and extended use period as specified in the LURA. For the purposes of this subparagraph (maintaining the promised percentage of Units at the selected levels of AMGI), if at re-certification the tenant's household income exceeds the specified limit, then the Unit remains as a Unit restricted at the specified level of AMGI until the next available Unit of comparable or smaller size is designated to replace this Unit. Once the Unit exceeding the specified AMGI level is replaced, then the rent for the previously qualified Unit at the specified level of AMGI may be increased over the LIHTC requirements. Rent increases, if any, should comply with lease provisions and local tenant landlord laws.~~

#### §49.7(f)(8) Length of Compliance Period

**Comment:** One comment emphasized the language in 2306.6711 of SB322 that indicates that the most weight should go to criteria that will produce the greatest number of high quality units committed to remaining affordable to qualified tenants for extended periods. Comment also mentioned that the compliance period wording is confusing as it refers to adding ten years which results in forty years. Another comment asked that the period be extended to 55 years.

**Department Response:** In an effort to ensure that proper weight is given to length of affordability, and to allow an Applicant the choice of varying compliance period terms, an increase in points and length of compliance is proposed. The language was also redrafted to clarify the time frames. Furthermore, to simplify this exhibit the shorter time period for rehabilitation developments was removed.

~~(8) Length of Compliance Period. The initial compliance period for a development is fifteen years. In accordance with Code, developments are required to adhere to an extended low income use period for an additional 15 years. To receive points the Development Owner elects, in the Application, to extend the compliance period beyond the extended low income use period for an additional 5 years for rehabilitation projects, or 10 years for new construction. By this action, the Extended Use Period shall be a period of 35 years for rehabilitation Developments or 40 years for new construction. In both cases, The periods commences with the first year of the Credit Period. (4 points).~~

~~(A) Extend the compliance period for an additional 10 years, with an Extended Use Period of 40 years (8 points);~~

~~(B) Extend the compliance period for an additional 15 years, with an Extended Use Period of 45 years (10 points);~~

~~(C) Extend the compliance period for an additional 20 years, with an Extended Use Period of 50 years (12 points); or~~

~~(D) Extend the compliance period for an additional 25 years, with an Extended Use Period of 55 years (14 points);~~

#### §49.7(f)(10) Pre-Application Points

**Comment:** Several comments was made asking that the 15 points for filing the pre-application not be lost in the event that the selected set-aside is changed from pre-application to application, because this would be more beneficial to applicants filing in the rural and preservation set-asides. It was also recommended that the points be reduced to 5 points because this is new territory and reducing the points will minimize any negative outcomes due to tight timeframes. Conversely, support was given to the current point structure because they are well justified.

**Department Response:** The key to the success of the pre-application process is for the results to be informative enough that an applicant can make an educated decision about their chances at success if they were to proceed with a full application. Their decision needs to be based on substantive information relating to their competitors scoring within their set-aside and their region. For an applicant to change set-asides makes their information unreliable and jeopardizes other participants ability to make decisions based on the knowledge that specific developments with specific scores are in particular set-asides. The high points associated with the pre-application are designed to ensure that the key information needed for the educated choices will not be altered and therefore make it more valuable. If points were reduced from 15 to 5 it would essentially negate the strength and validity of the pre-application results because there would be minimal penalty for making changes to a “better” set-aside or to increase points in other areas. Staff does not suggest allowing the points to be awarded for entities that alter their set-aside or for decreasing the points. Because clarification on the set-aside was not originally integrated into the QAP, language for that has been added.

*(10) Pre-Application Points. Developments which submit a Pre-Application during the Pre-Application Acceptance Period and meet the requirements of this paragraph shall receive 15 points. To be eligible for these points, the proposed development in the Pre-Application must:*

- (A) be for the identical site and unit mix as the proposed development in the Application;
- (B) have met the Pre-Application Threshold Criteria;
- (C) be serving the same target population in the Application in the same set-aside; and
- (D) not have altered the documentation for the Pre-Application Selection Criteria.

#### **§49.7(f)(11) Point Reductions**

**Comment:** Multiple comments were received in opposition to this new exhibit. For items outside the control of the developer, or actions that may be geared towards increasing the stability of the project, they should not be unduly penalized as this is the nature of the market. This policy may drive away developers. Furthermore, for developments where the applicant is returning for more credits and cannot meet their deadlines until new credits are awarded, there is no exception for extenuating circumstances. A revised structure was provided that allowed the \$2,500 extension fee to count as the penalty for the first extension request, and then added more charges and point deductions for subsequent extensions. Comments were made requesting clarification of the base year for point reductions for extension requests. One comment was also received that suggested that the intent behind SB322 was that the penalty should be increased to 15 points so that the penalty was severe enough that applicants with projects that had requested extensions would be non-competitive in the new cycle so that they could concentrate their efforts on the original development. A complementary suggestion was that penalty points should not apply at all to developers who are taking over a development which had a previously requested extensions.

**Department Response:** 2306.6710.(b)(2) of SB322 states that “if an application satisfies the threshold criteria, the department shall score and rank the application using a point system based on criteria that are adapted to regional market conditions and adopted by the department, including criteria...imposing penalties on the applicants or affiliates who have requested extensions of department deadlines relating to developments supported by housing tax credit allocations made in the application round preceding the current round.” The wording of this indicates that the penalty is expected to be part of the point system

criteria and therefore can not be deleted entirely and does need to involve points. Proposed language that was submitted had the first extension only involving a fee, but the Department felt that the two point penalty is more in keeping with the interest of the Board. The draft QAP clearly states that the penalty is for Applicants or Affiliates on their current year application score if they requested extensions of Department deadlines in the preceding round. While the suggestion that the bill intended this particular criteria to be a severe penalty may be the case, there is nothing in the bill itself that reflects that intent.

*(11) Point Reductions. Penalties will be imposed on Applicants or Affiliates who have requested extensions of Department deadlines relating to developments receiving a housing tax credit allocation made in the application round preceding the current round. Extensions that will receive penalties include all types of extensions identified in Section 49.13 of this title, including Projects whose extensions were authorized by the Board. The schedule of penalties to Applicants or Affiliates requesting extensions is as follows: ~~Two points will be reduced for each extension request made.~~*

*(A) First extension request - \$2,500 extension penalty fee plus 2 point deduction;*

*(B) Second extension request - \$25//Unit plus 2 point deduction; and*

*(C) Third extension request - \$35/Unit plus 2 point deduction.*

#### **§49.7(g) Credit Amount**

**Comment:** Well-supported comment was received suggesting that a credit cap per unit (varied by location in a QCT or not) be integrated into the program to further strive to meet the goal of SB322 of maximizing credits spent. An additional comment was received supporting a credit cap universally of \$6,500 regardless of QCT status (also provided as a SF figure of \$65/SF) and a cap of \$1.2 million in developer fees. These fees would not apply to tax exempt bond developments. Overall these suggestions are supported because they will increase the productivity of the program without any measurable change in quality, and complies with the mandate of SB322 to maximize the number of suitable affordable units.

**Department Response:** Staff is supportive of a credit cap per Unit that will further support the implementation of SB322. However, based on a cost evaluation of QCTs, and bearing in mind the many other areas of the QAP where QCTs receive advantages, the Department does not recommend having a separate cap for QCTs. The average cost per unit in 2001 was \$5,730, which makes the proposal of \$6,500 quite realistic and feasible.

*(g) Credit Amount. The Department shall issue tax credits only in the amount needed for the financial feasibility and viability of a Development throughout the Compliance Period. The issuance of tax credits or the determination of any allocation amount in no way represents or purports to warrant the feasibility or viability of the Development by the Department. The Department will limit the allocation of tax credits to no more than \$1.2 million per Development. The allocation of tax credits shall also be limited to not more than \$1.6 million per Applicant per year. The Department will limit the allocation of tax credits to not more than \$6,500 per Unit. These limitations will apply to any Applicant or Related Party unless otherwise provided for by the Board. Tax Exempt Bond Development Applications are not subject to the per Development and per Applicant or Related Party credit limitations, and Tax Exempt Bond Developments will not count towards the total limit on tax credits per Applicant.*

#### **§49.7(k)(4) Material Alteration relating to Amendments of Applications**

**Comment:** The definitions for Material Alteration were not specific enough, and because of the significant implications of this section the definitions need to be as precise as possible.

**Department Response:** The entire section relating to Application Amendments was taken verbatim from §2306.6712 of SB322. Staff feels that the language of the bill is sufficient in addressing this issue. No changes are proposed.

## §49.8 Underwriting Guidelines

**Comment:** As mentioned under §49.7(f)(4)(F) relating to Unit amenities, it was noted by several persons that the underwriting guidelines in subsection (b) indicate that underwriting will be done using the Average quality as defined by Marshall & Swift, but that in the amenity exhibit the amenities that the Department is giving points for fall under the Very Good category of Marshall & Swift. There needs to be consistency between these two items for the applications to be underwritten properly.

It was also requested that the fee limits in subsection (g) be revised for rural deals. The MOU with RD reduces the allowable builder fees to a level that is lower than the fees allowed by either agency (TDHCA is  $6\%+2\%+6\%=14\%$  and RD is  $3\%+3\%+8\%=14\%$ ). Because of the MOU, RD uses the lower of each of the three line items and cuts the fees to 11% ( $3\%+2\%+6\%$ ), which is lower than what each of the Agency's has determined to be realistic. This could be solved by addressing this issue in the MOU revisions and by revising the QAP to state, "The combination of builder's general requirements, builders overhead, and builder's profit should not exceed the lower of TDHCA or RD requirements." Another comment on subsection (g) was that the last sentence of that paragraph relating to developer fees is unclear and does not make sense. Several comments, relating to the underwriting of CHDOs were also provided. One indicated that CHDOs should be required to irrevocably choose whether they will or will not claim local property tax exemption and then they should be underwritten accordingly. Another thought that all CHDO applications should be underwritten with the assumption that the entity will be paying property taxes, ensuring that credits will not be reduced, particularly if legislation is removed giving these exemptions.

Comment was also received asking that the state adjust its underwriting criteria to account for varying degrees of environmental differences that affect construction costs. Underwriting should consider multipliers offered by Marshall & Swift on a regional basis, because the multipliers allow for exceptional conditions, particularly prevalent in the Rio Grande Valley. Further the Valley has higher construction costs due to limited interstate highway service to the area, high local standards, and lack of skilled labor in the area. It was also suggested that there should be a comment period for developers to talk with underwriting before a recommendation is made to the Board.

**Department Response:** Relating to the Marshall & Swift standards, the Department has traditionally adopted a policy of costing particular amenities on an individual basis as they are designed into the development. Language relating to this procedure has been added into this section to provide this clarification to the public. Staff also agrees with the change to preclude the Department from unduly penalizing Rural Development projects. A change is recommended addressing the concerns relating to CHDOs. Relating to the regional issue, the Department already uses the regional and local multipliers provided by Marshall & Swift. Furthermore, the underwriting department does talk with applicants as needed while it performs its analysis.

*(b) Construction Standards. The cost basis is defined using Average quality as defined by Marshall & Swift Residential Cost Handbook. If the Development contains amenities not included in the Average quality standard, the Department will take into account the costs of the amenities as designed in the Development. If the Development will contain single family buildings as permitted under the "Ineligible Building Type" definition in §49.2(48) of this title, then the cost basis should be consistent with single family Average quality as defined by Marshall & Swift Residential Cost Handbook.*

*(g) Fee Limits. The development cost associated with general requirements cannot exceed 6% of the eligible basis associated with onsite site work and construction hard costs. The development cost associated with contractor overhead cannot exceed 2% of the eligible basis associated with onsite site work and construction hard costs. The development cost associated with contractor profit cannot exceed 6% of the eligible basis associated with onsite site work and construction hard costs. For Developments also receiving*

financing from TxRD-USDA, the combination of builder's general requirements, builder's overhead, and builder's profit should not exceed the lower of TDHCA or TxRD-USDA requirements. The development cost associated with developer's Fees cannot exceed 15% of the project's Total Eligible Basis (adjusted for the reduction of federal grants, below market rate loans, historic credits, etc.), as defined in §49.2(34), not inclusive of the developer fees themselves. The 15% can be divided between overhead and fee as desired but the sum of both items must not exceed 15%. The Developer Fee may be earned on non-eligible basis activities, but only 15% of eligible basis items may be included in basis for the purpose of calculating a project's credit amount.

*(h)(4) Expenses: Applicants should provide an estimate of their expected expenses based on their own research (internal historical operating data, IREM, etc.) For new developments, the expenses must include at least \$200 per unit in reserve for replacement. For rehabilitation developments, the expenses must include at least \$300 per unit in reserve for replacement. CHDOs must identify if they will be obtaining a property tax exemption or not. If they indicate that they will have an exemption, they must provide reasonable proof that the exemption can be attained. If no reasonable proof is provided, the Development will be underwritten under the assumption that property taxes must be paid. The Applicant's expenses will be compared against the most current information contained in the Department's database and expenses submitted by other comparable projects. The underwriter will analyze the development based on the current TDHCA operating database, the project's existing historical performance, if any, the application proforma, the market study and any additional documentation provided for consideration. A line by line review by expense category will on a project-by-project basis determine the appropriate anticipated operating expense for each project.*

#### **§49.9(a) Market Study Requirements**

**Comment:** Comment was received recommending the exclusion of all unnecessary information in the Market Study to lower the report's production cost. Specifically requested was the deletion of the development cost analysis because the requested information is typically beyond the expertise of a market analyst, and operating expense analysis because TDHCA already maintains an operating database that it works from so the requested information is not utilized. The level of detail in the market study is viewed as unnecessary because there is no concern relating to loan foreclosure for tax credits, as with other programs.

**Department Response:** Underwriting staff, the primary reviewers of the market study components, agree that each of these sections are seldom utilized, and that the Department relies on its own data. Therefore, staff recommends removing these market study requirements from §49.9(a)(5)(C) to allow for reduced market study fees.

~~*(vii) total Development cost based upon a reasoned and widely accepted cost estimating technique independent of the Applicant's estimate;*~~

~~*(viii) rental income, secondary income, vacancy and collection, and major category expense projections for the Development derived independent of the applicant's estimates but based on historic and/or well established data sources of comparable projects; and*~~

#### **§49.9(b) Concentration**

**Comment:** Affordable housing which replaces previously existing substandard public housing within the same sub-market on a unit-for-unit basis, and which gives the displaced tenants of the previously existing public housing a leasing preference, should be an exception to the concentration restrictions established.

**Department Response:** This is an excellent point. Staff suggests reflecting this consideration in the policy, however it will be limited not only to substandard public housing, but any substandard affordable housing.



*(b) Concentration. The Department intends to limit the approval of funds to new multifamily housing projects requesting funds where the anticipated capture rate is in excess of 25% for the primary or sub-market unless the market is a rural market. In rural markets, the Department intends to limit the approval of funds to new multifamily housing projects requesting funds from the Department where the anticipated capture rate is in excess of 100% of the qualified demand. Affordable housing which replaces previously existing substandard affordable housing within the same sub-market on a Unit for Unit basis, and which gives the displaced tenants of the previously existing affordable housing a leasing preference, is excepted from these concentration restrictions. The documentation needed to support decisions relating to concentration are identified in subsection (a) of this section.*

#### **§49.10(b) Compliance of Construction Phase**

**Comment:** Several comments suggested that properties receiving Rural Development (RD) financing not utilize the third party construction inspectors, but that the Department accept the inspection reports prepared by RD. RD deals are typically inspected every month by the inspecting architect and the RD local office representative, and then inspected by the State RD architect at substantial completion and at 100% completion. The RD inspectors are more thorough, have a better knowledge base, and are more consistent and reliable in their inspections. Furthermore, the fee for the third party inspectors is exorbitant.

**Department Response:** Staff is eager to streamline and reduce inefficiencies. The proposal in this comments is very logical.

*(b) The Department, through the division with responsibility for compliance matters, shall monitor for compliance with all applicable requirements the entire construction phase associated with any Development under this title. The monitoring level for each Development must be based on the amount of risk associated with the Development. The Department shall use the division responsible for credit underwriting matters and the division responsible for compliance matters to determine the amount of risk associated with each Development. After completion of a Development's construction phase, the Department shall periodically review the performance of the Development to confirm the accuracy of the Department's initial compliance evaluation during the construction phase. Developments having financing from TxRD-USDA will be exempt from these inspections, provided that the Applicant provides the Department with copies of all inspections made by TxRD-USDA throughout the construction of the Development within fifteen days of the date the inspection occurred.*

#### **§49.10(h) Section 8 Acceptance Requirements**

**Comment:** Praise was noted for the Department's commitment to not allowing discrimination against §8 voucher holders. Comment was also made that sometimes a Development's management practices make it more difficult for Section 8 voucher holders to reside there, such as requiring a first partial month payment at move in, which is not covered by Section 8 until the following month, making renting infeasible.

**Department Response:** Management policies do not tend to prohibit Section 8 tenants. The issue noted in the public comment is an issue of the local PHA's payment policy and lack of coordination with the owner on the tenants needs.

#### **§49.10(r) Material Non-Compliance**

**Comment:** Comment suggested that the QAP add, "Units not available for occupancy due to natural disaster or hazard due to no fault of the Owner should not disqualify the Owner or cause the Owner to be cited for noncompliance."

**Department Response:** The Department proposed similar, but alternative language, to meet this request, to ensure that Owners are not harshly penalized for hazards outside their control. A new item under 49.10(r)(4)(B) was added.

*(x) Units not available for occupancy due to natural disaster or hazard due to no fault of the Owner. This carries no point value.*

### **§49.11(d)(3) Fair Housing Training**

**Comment:** It was suggested that the fair housing training only be required for the Owner and not the architect, and that the training, once attended, will cover the Applicant for the ensuing four years.

**Department Response:** The Department has only recently initiated this policy. To date, most casual comments to tax credit staff have indicated support for the training policy. Before reducing the applicability of the requirement to the Owner, the Department suggests maintaining the requirement for the Owner and the Architect through the 2002 cycle to determine its success. Also, because the Department can not predict what changes may occur in federal laws in the future relating to fair housing, it would be imprudent to exempt someone for four years into the future. No changes are proposed.

### **§49.11(f) Housing Credit Allocations**

**Comment:** It was suggested that the Department increase its monitoring efforts for compliance with accessibility by integrating a self-evaluation into the application process, which would include any offices, model units or other facilities to be used by the development to provide tenant services.

**Department Response:** Staff supports the inclusion of a self-evaluation form for the Applicant as this emphasizes compliance to the owner, without placing any additional burden on the compliance division staff. However, it seems that it would be more useful to have the applicant do the self-evaluation once the development is constructed, not beforehand where boxes can easily be checked while there is nothing concrete to compare the form to. Staff suggests integrating this self-evaluation as a requirement of Cost Certification.

*(f) The Department shall make a Housing Credit Allocation, either in the form of IRS Form 8609, with respect to current year allocations for buildings placed in service, or in the Carryover Allocation Document, for buildings not yet placed in service, to any Development Owner who holds a Commitment Notice which has not expired, and for which all fees as specified in §49.13 of this title, have been received by the Department. For Tax Exempt Bond Developments, the Housing Credit Allocation shall be made in the form of a Determination Notice. For an IRS Form 8609 to be issued with respect to a building in a Development with a Housing Credit Allocation, satisfactory evidence must be received by the Department that such building is completed and has been placed in service in accordance with the provisions of the Department's Cost Certification Procedures Manual. The manual will require, in addition to other items, that a self-evaluation form for compliance with Americans with Disabilities Act, Fair Housing Act and Section 504 of the Rehabilitation Act has been completed by the Owner. The Department shall mail or deliver IRS Form 8609 (or any successor form adopted by the Internal Revenue Service) to the Development Owner, with Part I thereof completed in all respects and signed by an authorized official of the Department. The delivery of the IRS Form 8609 will occur only after the Development Owner has complied with all procedures and requirements listed within the Cost Certification Procedures Manual. Regardless of the year of Application to the Department for low income housing tax credits, the current year's Cost Certification Procedures Manual must be utilized when filing all cost certification requests. A separate housing credit allocation shall be made with respect to each building within a Development which is eligible for a housing credit; provided, however, that where an allocation is made pursuant to a Carryover Allocation Document on a Development basis in accordance with*

*the Code, §42(h)(1)(F), a housing credit dollar amount shall not be assigned to particular buildings in the Development until the issuance of IRS Form 8609s with respect to such buildings.*

### **§49.12(b) Application Log**

**Comment:** A comment was made suggesting that the QAP reference to the application submission log should list all of what the log will include and that it should additionally include full contact information for all members of the Development Team. (Discussed at §49.4(f) also.)

**Department Response:** The details of the application log that were previously located at §40.4(f) have been integrated into this section so that the information is kept together in one easily referenced location. Staff supports the addition of the Development Team information.

*(b) The Department shall maintain for each Application an Application Log that tracks the Application from the date of its submission. The Application Log will contain, at a minimum, the information identified in paragraphs (1) through (9) of this subsection.*

*(1) the names of the Applicant and Related Parties, the owner contact name and phone number, and full contact information for all members of the Development Team;*

*(2) the name, physical location, and address of the Development, including the relevant region of the state;*

*(3) the number of units and the amount of housing tax credits requested for allocation by the Department to the Applicant;*

*(4) any set-aside category under which the Application is filed;*

*(5) the requested and awarded score of the Application in each scoring category adopted by the Department under the Qualified Allocation Plan;*

*(6) any decision made by the Department or Board regarding the Application, including the Department's decision regarding whether to underwrite the Application and the Board's decision regarding whether to allocate housing tax credits to the Development;*

*(7) the names of persons making the decisions described by paragraph (6) of this subsection, including the names of Department staff scoring and underwriting the Application, to be recorded next to the description of the applicable decision;*

*(8) the amount of housing tax credits allocated to the Development; and*

*(9) a dated record and summary of any contact between the Department staff, the Board, and the Applicant or any Related Parties.*

### **§49.13(a) and (b) Pre-Application and Application Fees**

**Comment:** It was emphasized that the requirement in SB322 under §2306.6716 states that the Department fees must reflect actual processing costs. The comment concluded that it does not allow for the overcharging of fees to non-CHDO applicants to counter-balance the reductions that are required to be made for CHDOs.

**Department Response:** The Department's proposed fee structure, which is provided in the QAP, is based on actual processing. The fee reduction to CHDOs is not balanced by overcharging other Applicants. No changes are proposed.

## **GENERAL TAX CREDIT COMMENTS NOT RELATED SPECIFICALLY TO THE qap**

### **Advisory Committee**

**Comment:** Several comments were received requesting that the Department establish an advisory committee that would report to the Board to focus on addressing the needs of persons with disabilities.

**Department Response:** The Department is committed to the establishment of this advisory committee and is currently working with the advocacy community on establishing the membership.

### **Appraisal Guidelines**

**Comment:** Comment suggested that the Appraisal Guidelines, which require addressing “any potential violations of ADA,” is drafted incorrectly because ADA does not apply to residential housing. By using the term, the Department is confusing the proper standard for residential housing with non-residential structures.

**Department Response:** The Department is currently undertaking a revision of the Appraisal Guidelines and this comment will definitely be integrated into that revision to ensure reference to the proper regulations.

### **Barrier Removal**

**Comment:** Comment was received suggesting that the Department should initiate a barrier removal program.

**Department Response:** The tax credit program, at this time, does not have a formal program for barrier removal, however the threshold requirement that all developments adhere to §504 will increase barrier removal in rehabilitation developments.

### **Department’s Deference to the Business Deal**

**Comment:** Several comments were made indicating that the Department needs to establish a core philosophy of what the important factors are in providing housing, and not get bogged down in confirming details that are essentially the matter of the business deal, which is handled by lenders and syndicators. The market will determine the success of a deal. The Department does need to be creating artificial guidelines.

**Department Response:** The Department strives to always be conscious of the business deal and has gathered the comments of syndicators and lenders, in addition to the comments of developers and housing advocates, to ensure that all facets of the development are considered.

### **Entire Overhaul of QAP**

**Comment:** Comment was made suggesting that for 2003 the entire QAP needs to be deleted and rewritten as a clean, understandable, organized mission-driven document that involves the collaboration of the industry.

**Department Response:** The Department is supportive of a re-creation of the QAP that will be more user-friendly, and will take steps to work with program advocates and participants in this endeavor.

### **Handling of Forward Commitments**

**Comment:** One comment indicated that there was confusion on how forward commitments are handled from year to year in determining credit availability, within the confines of the regional allocation. It seems logical that the 2002 forward commitments made in 2001 would be back out after the ceiling is divided into regions, not before the regional allocation as one lump sum.

**Department Response:** The Department handles the forward commitments under this QAP in the following way: the regional allocation formula is applied to the entire tax credit ceiling, approximately \$37.9 million for 2002. At that point, the forward commitments made in 2001 are individually subtracted from the region where they were awarded. The remaining dollars in the region will reflect the allocation for that region.

### **Handling of Public Input**

**Comment:** It was suggested that TDHCA reviewers need to be fair and should try to identify NIMBYism at hearings and not let this have any consideration in a development's award, and that the local government should have more weight in its opinion than the public.

**Department Response:** The Board has historically taken NIMBYism with caution and tends not to disregard a project for only that reason. They will continue to utilize this approach in making allocation decisions.

### **MOU with TxRD**

**Comment:** Comments were received asking that the Department promptly initiate revisions to the MOU with TxRD to improve and update several issues. One issue included adjusting the builder fees as further described in the discussion on §49.8(g).

**Department Response:** Rural Development and the Department are both committed to the revision of this document and meetings between the two agencies are already taking place.

### **Pre-Application Deadline**

**Comment:** One comment was received asking that the Department consider extending the due date of the Pre-Application to at least January 11 because the current deadline adversely affects the holiday season for Applicants. They suggested moving all the dates back by one week to make this work.

**Department Response:** The Department is sympathetic that the development community will have to do much of their preparation through the holiday season. Unfortunately, SB322 requires that the Application deadline is March 1 and that a Pre-Application process be established. Already the time frame is very tight. With Pre-Applications being submitted on January 4, staff will have roughly 3 weeks to evaluate and post the results by January 31, giving developers only one month to complete the remainder of their applications.

### **Program Inventory**

**Comment:** It was suggested that the Department maintain and publish a comprehensive listing of all properties that have been awarded tax credits and that have been placed in service. The list should include all properties ever having received credits, not merely those currently in compliance.

**Department Response:** The Department currently maintains two separate lists. One is a list of all tax credit developments since the inception of the program that are still in compliance. The primary purpose of this list is to aid individuals looking for affordable housing in their area. To add developments that are not in compliance to this list would be adding misleading information for persons seeking units. The other list the Department maintains is a list of developments that were awarded credits, but for whatever reason, are no longer in compliance and therefore are not available inventory units. This list is also available upon request.

## Single Family Emphasis

**Comment:** Comment suggested that with the increase in Section 8 homeownership vouchers and other home ownership initiatives, there should be more of an emphasis in the 2003 QAP on permitting single family developments.

**Department Response:** The Department is more than willing to explore the feasibility of removing many of the restrictions on single family development currently existing in the tax credit program.

## TECHNICAL CHANGES FOR QAP CONSISTENCY

### General Services Commission Name

**Explanation of Change:** Because the name of the General Services Commission was changed, all references to the GSC in the QAP have been changed to read: "Texas Building and Procurement Commission (formerly General Services Commission)."

### §49.2(15) Definition of Carryover Allocation Document

**Explanation of Change:** The definition for Carryover Allocation Document found at 50.2(15) references another section of the QAP. That reference was not correct. The corrected reference is proposed.

*(15) Carryover Allocation Document - A document issued by the Department to a Project Owner pursuant to §49.4(nk) of this title.*

### §49.2(38) – Definition for General Development

**Explanation of Change:** The definition needs to be revised to update references to the other program set-asides.

*(38) General Developments - Any Development which is not a Qualified Nonprofit Development or is not under consideration in the Rural, At-Risk Development or Elderly set-asides as such terms are defined by the Department.*

### §49.7(e)(9)(A)(i) Exhibit 107 – Nonprofit Threshold Requirements

**Explanation of Change:** The exhibit erroneously refers to section 491(c)(3) status for a nonprofit instead of 501(c)(3).

*(i) an IRS determination letter which states that the Qualified Nonprofit Organization is a 501 491(c)(3) or (4) entity;*

### §49.7(e)(10)(D) Exhibit 108 (C) and (D)

**Explanation of Change:** The grammar needed to be corrected so that the "and" is in the right place.

(C) clear identification of the selling Persons or entities, and details of any relationship between the seller and the Applicant or any Affiliation with the Development Team, Qualified Market Analyst or any other professional or other consultant performing services with respect to the Development. If any such relationship exists, complete disclosure and documentation of the related party's original acquisition and holding costs since acquisition to justify the proposed sales price must also be provided; and

(D) "Exhibit 108D, Acquisition of Existing Buildings Form." ~~and (1) submission of the most recent Phase I Environmental Assessment (ESA) of the subject Property, dated not more than 12 months prior to the Carryover deadline, and performed in accordance with the Environmental Study Guidelines provided in the Application Submission~~

Procedures Manual. If the ESA is not addressed to the Department, the party generating the ESA must grant use of the ESA to the Department. This ESA must be provided unless the Project has an obligation of TxRD-USDA funds. While an ESA is not required of Projects which have an obligation of TxRD-USDA funds, the Project Owners of such Projects are hereby notified that it is their responsibility to ensure that the Property is maintained in compliance with all state and federal environmental hazard requirements. Those Projects which have or are to receive first lien financing from HUD may submit HUD's environmental assessment report, provided that it conforms with the requirements of this paragraph. In the event that an ESA on the Project is older than 12 months, the Project Owner may supply the Department with an update letter from the Person or organization which prepared the initial assessment; provided, however, that the Department will not accept any ESA which is more than 24 months old. An environmental report that is not submitted by the Carryover deadline will cause the Project to be terminated.

~~(A) If the report recommends further studies or establishes that environmental hazards currently exist on the Property, or are originating off-site but would nonetheless affect the Property, then the Project Owner must act on such a recommendation or provide a plan for either the abatement or elimination of the hazard. Evidence of action or a plan for the abatement or elimination of the hazard must be presented upon Carryover submittal. If the ESA represents that there are non-mitigable environmental conditions, the Department may not issue a Carryover Allocation.~~

~~(B) For Projects which have had a Phase II Environmental Assessment performed and hazards identified, the Applicant is required to provide a copy of that Assessment to the Department as part of this Exhibit. The Applicant must also maintain a copy of said assessment on-site available for review by all persons which either occupy the Property or are applying for tenancy, unless the condition is remedied through the construction or rehabilitation of the Property.~~



2002 Low Income Housing Tax Credit Program Qualified Allocation Plan and Rules

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**§49.1 Scope.**

(a) Purpose. The Rules in this chapter apply to the allocation by the Texas Department of Housing and Community Affairs (the Department) of certain low income housing tax credits authorized by applicable federal income tax laws. The Internal Revenue Code of 1986, §42, as amended, provides for credits against federal income taxes for owners of qualified low income rental housing Developments. That section provides for the allocation of the available tax credit amount by state housing credit agencies. Pursuant to Executive Order AWR-91-4 (June 17, 1991), the Department was authorized to make housing credit allocations for the State of Texas. As required by the Internal Revenue Code, §42(m)(1), the Department developed a Qualified Allocation Plan (QAP) which is set forth in §§49.1 through 49.18 of this title. Sections in this chapter establish procedures for applying for and obtaining an allocation of the low income housing tax credit, along with ensuring that the proper threshold criteria, selection criteria, priorities and preferences are followed in making such allocations.

(b) Program Statement. The Department shall administer the program to encourage the development and preservation of appropriate types of rental housing for households that have difficulty finding suitable, affordable rental housing in the private marketplace; maximize the number of suitable, affordable residential rental units added to the state’s housing supply; prevent losses for any reason to the state’s supply of suitable, affordable residential rental units by enabling the rehabilitation of rental housing or by providing other preventive financial support; and provide for the participation of for-profit organizations and provide for and encourage the participation of nonprofit organizations in the acquisition, development and operation of affordable housing developments in rural and urban communities.



(c) Allocation Goals. It shall be the goal of this Department and the Board, through these provisions, to encourage diversity through broad geographic allocation of tax credits within the state and to promote maximum utilization of the available tax credit amount. The criteria utilized to realize this goal is described in §49.7 (a) through (f) of this title.

(d) Utilization of Historically Underutilized Businesses. It is the policy of the Department to encourage the use of Historically Underutilized Businesses (HUBs) in the tax credit program as developers, general partners and members of a development team. In response to this policy, all Applicants are required to make a good faith effort to ensure maximum HUB participation in the program. The Department will require the Applicant to identify the HUBs that will be used in the development and/or continuous operation of the Development. The Department will also request information pertaining to the use of HUBs in the actual development of the Development at the time of final allocation of tax credits, pursuant to §49.11(f) of this title.

(e) Coordination with Rural Agencies. To assure maximum utilization and optimum geographic distribution of tax credits in rural areas, and to achieve increased sharing of information, reduction of processing procedures, and fulfillment of Development compliance requirements in rural areas, the Department:

(1) has entered into a Memorandum of Understanding (MOU) with the Rural Development services of the United States Department of Agriculture serving the State of Texas (TxRD-USDA) to coordinate on existing, rehabilitated, and new construction housing Developments financed by TxRD-USDA; and

(2) will jointly administer the Rural Set-Aside with the Texas Office of Rural Community Affairs (ORCA). Upon its creation, and once it has become operational, ORCA will assist in developing all Threshold, Selection and Underwriting Criteria applied to Applications eligible for the Rural Set-Aside. The Criteria will be approved by that Agency. To ensure that the Rural Set-Aside receives a sufficient volume of eligible Applications, the Department and ORCA shall jointly implement outreach, training, and rural area capacity building efforts.

(f) Memorandum of Understanding (MOU) with the United States Department of Housing and Urban Development (HUD) regarding the 911 Subsidy Layering Review. The Department and HUD shall enter into a MOU regarding the Subsidy Layering Review of the sources and uses of funds in Developments receiving tax credits and HUD Housing Assistance.

#### **§49.2. Definitions.**

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Adaptive Reuse Development – A Development such as a hotel or dormitory that is proposed for conversion as permanent housing under the tax credit program.

(2) Administrative Deficiencies - The absence of information or documents from the Application which are essential to a thorough review and scoring of the Development. If an Application contains deficiencies which, in the determination of the Department staff, represent the need for clarification of information submitted at the time of the Application, the Department staff shall request correction of such Administrative Deficiencies. The Department staff shall provide this request in the form of a facsimile and a telephone call to the Applicant advising that such a request has been transmitted. Potential Administrative Deficiencies which may be corrected include, but are not limited to, incorrect calculation of the Development's unit mix, gross and net rentable areas, or the submission of exhibits that contain incomplete or conflicting information. If such Administrative Deficiencies are not corrected to the satisfaction of the Department within three business days of the deficiency notice date, then five points shall be deducted from the Selection Criteria score for each additional day the deficiency remains uncorrected. If such deficiencies are not corrected within five business days from the deficiency notice date, then the Application shall be terminated. The time period for responding to a deficiency notice begins at the start of the business day following the deficiency notice date. Deficiency notices may be sent to an Applicant prior to or after the end of the Application Acceptance Period. The correction of Administrative Deficiencies may not include changes in the Development Team, the Development configuration, or any other matters affecting the evaluation of the Application under §49.7(e) of this title.

(3) Affiliate - An individual, corporation, partnership, joint venture, limited liability company, trust, estate, association, cooperative or other organization or entity of any nature whatsoever that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with any other Person, and specifically shall include parents or subsidiaries.

(4) Agreement and Election Statement - A document in which the Development Owner elects, irrevocably, to fix the applicable credit percentage with respect to a building or buildings, as that in effect for the month in which the Department and the Development Owner enter into a binding agreement as to the housing credit dollar amount to be allocated to such building or buildings.

(5) Applicable Fraction - The fraction used to determine the Qualified Basis of the qualified low income building, which is the smaller of the Unit fraction or the floor space fraction, all determined as provided in the Code, §42(c)(1).

(6) Applicable Percentage - The percentage used to determine the amount of the low income housing tax credit, as defined more fully in the Code, §42(b). For purposes of the Application, the Applicable Percentage will be projected at 10 basis points above the greater of:

(A) the current applicable percentage, or

(B) the trailing 1-year, 2-year or 3-year average rate in effect during the month in which the Application is submitted to the Department.

(7) Applicant - Any Person or Affiliate of a Person who files a Pre-Application or an Application with the Department requesting a housing tax credit allocation. For purposes hereof, the Applicant is sometimes referred to as the "housing sponsor."

(8) Application - An application, in the form prescribed by the Department, filed with the Department by an Applicant, including any exhibits or other supporting material.

(9) Application Acceptance Period - That period of time during which Applications for either a Housing Credit Allocation from the State Housing Credit Ceiling or a Determination Notice for Tax Exempt Bond Developments may be submitted to the Department as more fully described in §49.14 of this title.

(10) Application Log - A form containing at least the information required by §49.12(b) of this title.

(11) Application Round - The period beginning on the date the Department begins accepting applications and continuing until all available credits from the State Housing Credit Ceiling (as stipulated by the Department) are allocated, but not extending past the last day of the calendar year.

(12) Application Submission Procedures Manual - The manual produced and amended from time to time by the Department which sets forth procedures, forms, and guidelines for the filing of Pre-Applications and Applications for low income housing tax credits.

(13) Area Median Gross Income (AMGI) - Area median gross household income, as determined for all purposes under and in accordance with the requirements of the Code, §42.

(14) At-Risk Development - a development that:

(A) receives the benefit of a subsidy in the form of a below-market interest rate loan, interest rate reduction, rental subsidy, Section 8 housing assistance payment, rental supplement payment, or rental assistance payment under the following federal laws, as applicable:

(i) Sections 221(d)(3), (4) and (5), National Housing Act (12 U.S.C. Section 1715l);

(ii) Section 236, National Housing Act (12 U.S.C. Section 1715z-1);

(iii) Section 202, Housing Act of 1959 (12 U.S.C. Section 1701q);

(iv) Section 101, Housing and Urban Development Act of 1965 (12 U.S.C. Section 1701s);

(v) any project-based assistance authority pursuant to Section 8 of the U.S. Housing Act of 1937; or

(vi) Sections 514, 515, 516, and 538 Housing Act of 1949 (42 U.S.C. Sections 1484, 1485, and 1486);

and

(B) is subject to the following conditions:

(i) the stipulation to maintain affordability in the contract granting the subsidy is nearing expiration (expiration will occur within two calendar years); or

(ii) the federally insured mortgage on the development is eligible for prepayment or is nearing the end of its mortgage term (the term will end within two calendar years).

(15) Beneficial Owner - A "Beneficial Owner" means:

(A) Any Person who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise has or shares;

(i) voting power which includes the power to vote, or to direct the voting as any other Person or the securities thereof; and/or

(ii) investment power which includes the power to dispose, or direct the disposition of, any Person or the securities thereof.

(B) Any Person who, directly or indirectly, creates or uses a trust, proxy, power of attorney, pooling arrangement or any other contract, arrangement or device with the purpose or effect of divesting such Person of Beneficial Ownership (as defined herein) of a security or preventing the vesting of such Beneficial Ownership as part of a plan or scheme to evade inclusion within the definitional terms contained herein; and

(C) Any Person who has the right to acquire Beneficial Ownership during the Compliance Period, including but not limited to any right to acquire any such Beneficial Ownership;

(i) through the exercise of any option warrant or right,

(ii) through the conversion of a security,

(iii) pursuant to the power to revoke a trust, discretionary account or similar arrangement, or

(iv) pursuant to the automatic termination of a trust, discretionary account, or similar arrangement.

(D) Provided, however, that any Person who acquires a security or power specified in clauses (i), (ii) or (iii) of subparagraph (C) of this paragraph, with the purpose or effect of changing or influencing the control of any other

Person, or in connection with or as a participant in any transaction having such purpose or effect, immediately upon such acquisition is deemed to be the Beneficial Owner of the securities which may be acquired through the exercise or conversion of such security or power. Any securities not outstanding which are subject to options, warrants, rights or conversion privileges as deemed to be outstanding for the purpose of computing the percentage of outstanding securities of the class owned by such Person but are not deemed to be outstanding for the purpose of computing the percentage of the class by any other Person.

(16) Board - The governing Board of Directors of the Department.

(17) Carryover Allocation - An allocation of current year tax credit authority by the Department pursuant to the provisions of the Code, §42(h)(1)(E) and Treasury Regulations, §1.42-6.

(18) Carryover Allocation Document - A document issued by the Department to a Development Owner pursuant to §49.4(n) of this title.

(19) Carryover Allocation Procedures Manual - The manual produced and amended from time to time by the Department which sets forth procedures, forms, and guidelines for filing Carryover Allocation requests.

(20) Code - The Internal Revenue Code of 1986, as amended from time to time, together with any applicable regulations, rules, rulings, revenue procedures, information statements or other official pronouncements issued thereunder by the United States Department of the Treasury or the Internal Revenue Service.

(21) Colonia -An unincorporated community located within 150 miles of the Texas-Mexico border, or a city or town within said 150 mile region with a population of less than 10,000 according to the latest U.S. Census, that has a majority population composed of individuals and families of low and very low income, who lack safe, sanitary and sound housing, together with basic services such as potable water, adequate sewage systems, drainage, streets and utilities, all as determined by the Department.

(22) Commitment Notice - A notice issued by the Department to a Development Owner pursuant to §49.4(i) of this title and also referred to as the "commitment."

(23) Compliance Period - With respect to a building, the period of 15 taxable years, beginning with the first taxable year of the Credit Period pursuant to the Code, §42(i)(1).

(24) Control - (including the terms "controlling," "controlled by", and/or "under common control with") the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of any Person, whether through the ownership of voting securities, by contract or otherwise, including specifically ownership of more than 50% of the general partner interest in a limited partnership, or designation as a managing general partner or the managing member of a limited liability company.

(25) Cost Certification Procedures Manual - The manual produced and amended from time to time by the Department which sets forth procedures, forms, and guidelines for filing requests for IRS Form(s) 8609 for Developments placed in service under the Low Income Housing Tax Credit Program.

(26) Credit Period - With respect to a building within a Development, the period of ten taxable years beginning with the taxable year the building is placed in service or, at the election of the Development Owner, the succeeding taxable year, as more fully defined in the Code, §42(f)(1).

(27) Department - The Texas Department of Housing and Community Affairs, a public and official governmental Department of the State of Texas created and organized under the Texas Department of Housing and Community Affairs Act, Texas Government Code, Chapter 2306 and Texas Civil Statutes, Article 4413(501) as amended by the 73rd Legislature, Chapter 725 and 141.

(28) Determination Notice - A notice issued by the Department to the Owner of a Tax Exempt Bond Development which states that the Development may be eligible to claim low income housing tax credits without receiving an allocation of credits from the State Housing Credit Ceiling because it satisfies the requirements of this QAP; sets forth conditions which must be met by the Development before the Department will issue the IRS Form(s) 8609 to the Development Owner; and specifies the amount of tax credits necessary for the financial feasibility of the Development and its viability as a qualified low income housing Development throughout the Credit Period.

(29) Development – A proposed qualified low income housing Development, for purposes of the Code, §42(g), that consists of one or more buildings containing multiple Units, and that, if the Development shall consist of multiple buildings, is financed under a common plan and is owned by the same Person for federal tax purposes, and the buildings of which are either:

(A) located on a single site or contiguous site; or

(B) located on scattered sites and contain only rent-restricted units.

(30) Development Consultant - Any Person (with or without ownership interest in the Development) who provides professional services relating to the filing of an Application, Carryover Allocation Document, and/or cost certification documents.

(31) Development Owner – Any Person or Affiliate of a Person who owns or proposes a Development or expects to acquire control of a Development under a purchase contract approved by the Department.

(32) Development Team - All Persons or Affiliates thereof which play(s) a material role in the development, construction, rehabilitation, management and/or continuing operation of the subject Property, which will include any consultant(s) hired by the Applicant for the purpose of the filing of an Application for low income housing tax credits with the Department.

(33) Economically Distressed Area - An area in which the water supply or wastewater systems are inadequate to meet minimal state standards; the financial resources are inadequate to provide services to meet those needs; and there was an established residential subdivision on June 1, 1989, as defined by the Texas Water Development Board.

(34) Eligible Basis - With respect to a building within a Development, the building's Eligible Basis as defined in the Code, §42(d).

(35) Executive Award and Review Advisory Committee ("The Committee") – A Departmental committee that will make funding and allocation recommendations to the Board based upon the evaluation of an Application in accordance with the housing priorities as set forth in §2306 of the Texas Government Code, and as set forth herein, and the ability of an Applicant to meet those priorities. The Committee will be composed of the executive director, the administrator of each of the Department's programs, and one representative from each of the Department's planning, underwriting, and compliance functions.

(36) Extended Low Income Housing Commitment - An agreement between the Department, the Development Owner and all successors in interest to the Development Owner concerning the extended low income housing use of buildings within the Development throughout the extended use period as provided in the Code, §42(h)(6). The Extended Low Income Housing Commitment with respect to a Development is expressed in the LURA applicable to the Development.

(37) General Contractor - One who contracts for the construction, or rehabilitation of an entire building or Development, rather than a portion of the work. The General Contractor hires subcontractors, such as plumbing contractors, electrical contractors, etc., coordinates all work, and is responsible for payment to the said subcontractors. This party may also be referred to as the "contractor."

(38) General Developments - Any Development which is not a Qualified Nonprofit Development or is not under consideration in the Rural, At-Risk Development or Elderly set-asides as such terms are defined by the Department.

(39) General Pool - The pool of credits that have been returned or recovered from prior years' allocations or the current year's Commitment Notices after the Board has made its initial allocation of the current year's available credit ceiling. General pool credits will be used to fund Applications on the waiting list without regard to set-aside except for the 10% Nonprofit Set-Aside allocation required under §42(h)(5) of the Code.

(40) Governmental Entity - Includes federal or state agencies, departments, boards, bureaus, commissions, authorities, and political subdivisions, special districts and other similar entities.

(41) Highrise Urban Infill Development – a Development comprised of three or more stories that is located within a central business district or its immediate environs or in inner-city neighborhoods characterized by documented higher than average land costs and higher density. For a building or buildings with more than three stories, an elevator must be included in the construction of any building within such Development.

(42) Historic Development – A residential Development that has received a historic property designation by a federal, state or local government entity.

(43) Historically Underutilized Businesses (HUB) – Any entity defined as an historically underutilized business with its principal place of business in the State of Texas in accordance with Chapter 2161, Texas Government Code.

(44) Housing Credit Agency - A Governmental Entity charged with the responsibility of allocating low income housing tax credits pursuant to the Code, §42. For the purposes of this title, the Department is the sole "Housing Credit Agency" of the State of Texas.

(45) Housing Credit Allocation - An allocation by the Department to a Development Owner of low income housing tax credit in accordance with §49.11 of this title.

(46) Housing Credit Allocation Amount - With respect to a Development or a building within a Development, that amount the Department determines to be necessary for the financial feasibility of the Development and its viability as a qualified low income housing Development throughout the Compliance Period and allocates to the Development.

(47) Housing Tax Credit ("tax credits") – A tax credit allocated, or for which a Development may qualify, under the low income housing tax credit program, pursuant to the Code, §42.

(48) HUD - The United States Department of Housing and Urban Development, or its successor.

(49) Ineligible Building Types - Those buildings or facilities which are ineligible, pursuant to this QAP, for funding under the tax credit program as follows:

(A) Hospitals, nursing homes, trailer parks and dormitories (or other buildings that will be predominantly occupied by Students) or other facilities which are usually classified as transient housing (other than certain specific types of transitional housing for the homeless and single room occupancy units, as provided in the Code, §§42(i)(3)(B)(iii) and

(iv) are not eligible. However, structures formerly used as hospitals, nursing homes or dormitories are eligible for credits if the Development involves the conversion of the building to a non-transient multifamily residential development.

(B) Single family detached housing, duplexes, and triplexes shall not be included in tax credit developments. The only exceptions to this definition are:

(i) Any Building comprised of less than four residential Units, regardless of employee or owner occupied Units and satisfying either of the requirements listed in subclauses (I) and (II) of this clause shall not be considered to include an Ineligible Building Type.

(I) Developments with 36 units or less that are located within a city or county with a population of not more than 20,000 or 50,000, respectively; or

(II) Developments receiving a financial contribution from the local governing entity in an amount equal to or exceeding seven percent of the construction hard costs. The financial contribution can be either a capital contribution, in-kind services to the Development, or a combination of capital contribution and in-kind services. The in-kind services must be above and beyond services typically provided to similar developments and must be fully documented in the form of proof of application at the time of Application, and proof of firm commitment by June 1, 2002.

(ii) An existing Rural Development that is federally assisted within the meaning of the Code, §42(d)(6)(B) and is under common ownership, management and Control shall not be considered to include an Ineligible Building Type. For qualifying federally assisted Rural Developments, construction cannot include the construction of new residential units. Rural Developments purchased from HUD will qualify as federally assisted.

(C) Any Qualified Elderly Development of two stories or more that does not include elevator service for any Units or living space above the first floor.

(50) IRS - The Internal Revenue Service, or its successor.

(51) Land Use Restriction Agreement (LURA) - An agreement between the Department and the Development Owner which is binding upon the Development Owner's successors in interest, that encumbers the Development with respect to the requirements of this title and the requirements of the Code, §42.

(52) Material Deficiencies - Deficiencies that are not eligible to be remedied pursuant to paragraph (2) of this subsection. Deficiencies caused by the omission of Threshold Criteria documentation specifically required by §49.7(e) of this title shall automatically be considered Material Deficiencies and shall be cause for termination.

(53) Material Non-Compliance - A property will be classified by the Department as being in material non-compliance status if the non-compliance score for such property is equal to or exceeds 30 points in accordance with the provisions of §49.5(b)(6) and under the methodology and point system set forth in §49.10 of this title.

(54) Minority Owned Business - A business entity at least 51% of which is owned by members of a minority group or, in the case of a corporation, at least 51% of the shares of which are owned by members of a minority group, and that is managed and controlled by members of a minority group in its daily operations. Minority group includes women, African Americans, American Indians, Asian Americans, and Mexican Americans and other Americans of Hispanic origin.

(55) Office of Rural Community Affairs (ORCA) - The state agency designated by the legislature as primarily responsible for rural area development in the state.

(56) Person - Means, without limitation, any natural person, corporation, partnership, limited partnership, joint venture, limited liability company, trust, estate, association, cooperative, government, political subdivision, agency or instrumentality or other organization of any nature whatsoever and shall include any group of Persons acting in concert toward a common goal.

(57) Persons with Disabilities - A person who:

(A) has a physical, mental or emotional impairment that;

(i) is expected to be of a long, continued and indefinite duration,

(ii) substantially impedes his or her ability to live independently, and

(iii) is of such a nature that the ability could be improved by more suitable housing conditions, or

(B) has a developmental disability, as defined in Section 102(7) of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6001-6007).

(58) Pre-Application - A preliminary application, in a form prescribed by the Department, filed with the Department by an Applicant prior to submission of the Application, including any required exhibits or other supporting material, as more fully described in §49.7(a) of this title.

(59) Pre-Application Acceptance Period - That period of time during which Pre-Applications for a Housing Credit Allocation from the State Housing Credit Ceiling may be submitted to the Department.

(60) Prison Community - A city or town which is located outside of a Metropolitan Statistical Area (MSA) or Primary Metropolitan Statistical Area (PMSA) and was awarded a state prison as set forth in the Reference Manual.

(61) Property - The real estate and all improvements thereon which are the subject of the Application (including all items of personal property affixed or related thereto), whether currently existing or proposed to be built thereon in connection with the Application.

(62) Qualified Allocation Plan (QAP) – A plan adopted by the Board, and approved by the Governor, under this title, and as provided in the Code, Section 42(m)(1) (specifically including preference for Developments located in Qualified Census Tracts and the development of which contributes to a concerted community revitalization plan) and as further provided in Sections 49.1 through 49.18 of this title, that:

(A) provides the threshold, scoring, and underwriting criteria based on housing priorities of the department that are appropriate to local conditions;

(B) gives preference in housing tax credit allocations to Developments that, as compared to other developments:

(i) when practicable and feasible based on available funding sources, serve the lowest income tenants; and

(ii) are affordable to qualified tenants for the longest economically feasible period.

(C) provides a procedure for the Department, the Department's agent, or another private contractor of the Department to use in monitoring compliance with the Qualified Allocation Plan and this title.

(63) Qualified Basis - With respect to a building within a Development, the building's Eligible Basis multiplied by the Applicable Fraction, within the meaning of the Code, §42(c)(1).

(64) Qualified Census Tract - Any census tract which is so designated by the Secretary of HUD and, for the most recent year for which census data are available on household income in such tract, either in which 50% or more of the households have an income which is less than 60% of the area median family income for such year or which has a poverty rate of at least 25%.

(65) Qualified Elderly Development – A Development which meets the requirements of the federal Fair Housing Act and:

(A) is intended for, and solely occupied by, Persons 62 years of age or older; or

(B) is intended and operated for occupancy by at least one person 55 years of age or older per Unit, where at least 80% of the total housing Units are occupied by at least one person who is 55 years of age or older; and where the Development Owner publishes and adheres to policies and procedures which demonstrate an intent by the owner and manager to provide housing for persons 55 years of age or older.

(66) Qualified Market Analyst - A real estate appraiser certified or licensed by the Texas Appraiser or Licensing and Certification Board or a real estate consultant or other professional currently active in the subject property's market area who demonstrates competency, expertise, and the ability to render a high quality written report. The individual's experience and educational background will provide the general basis for determining competency as a Market Analyst. Such determination will be at the sole discretion of the Department. The Qualified Market Analyst must not be related to or an Affiliate of the Development Owner, Development Consultant, or the CPA which provides documentation required for the Carryover Allocation Procedures Manual or Cost Certification Procedures Manual.

(67) Qualified Nonprofit Organization - An organization that is described in the Code, §501(c)(3) or (4), as these cited provisions may be amended from time to time, that is exempt from federal income taxation under the Code, §501(a), that is not Affiliated with or Controlled by a for profit organization, and includes as one of its exempt purposes the fostering of low income housing within the meaning of the Code, §42(h)(5)(C). A Qualified Nonprofit Organization may select to compete in any one of the set-asides, including, but not limited to, the nonprofit set-aside, the rural developments set-aside, the At-Risk Developments set-aside and the general set-aside.

(68) Qualified Nonprofit Development - A Development in which a Qualified Nonprofit Organization (directly or through a partnership or wholly-owned subsidiary) holds a controlling interest, materially participates (within the meaning of the Code, §469(h), as may be amended from time to time) in its development and operation throughout the Compliance Period, and otherwise meets the requirements of the Code, §42(h)(5).

(69) Real Estate Owned (REO) Developments - Any existing Residential Development that is owned or that is being sold by an insured depository institution in default, or by a receiver or conservator of such an institution, or is a property owned by HUD, Federal National Mortgage Association (Fannie Mae), Federal Home Loan Mortgage Corporation (Freddie Mac), federally chartered bank, savings bank, savings and loan association, Federal Home Loan Bank or a federally approved mortgage company or any other federal agency.

(70) Reference Manual - That certain manual, and any amendments thereto, produced by the Department which sets forth reference material pertaining to the Low Income Housing Tax Credit Program.

(71) Related Party – As defined,

(A) The following individuals or entities:

(i) the brothers, sisters, spouse, ancestors, and descendants of a person within the third degree of consanguinity, as determined by Chapter 573 of the Texas Government Code;

(ii) a person and a corporation, if the person owns more than 50 percent of the outstanding stock of the corporation;

(iii) two or more corporations that are connected through stock ownership with a common parent possessing more than 50 percent of:

(I) the total combined voting power of all classes of stock of each of the corporations that can vote;

(II) the total value of shares of all classes of stock of each of the corporations; or

(III) the total value of shares of all classes of stock of at least one of the corporations, excluding, in computing that voting power or value, stock owned directly by the other corporation;

(iv) a grantor and fiduciary of any trust;

(v) a fiduciary of one trust and a fiduciary of another trust, if the same person is a grantor of both trusts;

(vi) a fiduciary of a trust and a beneficiary of the trust;

(vii) a fiduciary of a trust and a corporation if more than 50 percent of the outstanding stock of the corporation is owned by or for:

(I) the trust; or

(II) a person who is a grantor of the trust;

(viii) a person or organization and an organization that is tax-exempt under the Code, Section 501(a), and that is controlled by that person or the person's family members or by that organization;

(ix) a corporation and a partnership or joint venture if the same persons own more than:

(I) 50 percent of the outstanding stock of the corporation; and

(II) 50 percent of the capital interest or the profits' interest in the partnership or joint venture;

(x) an S corporation and another S corporation if the same persons own more than 50 percent of the outstanding stock of each corporation;

(xi) an S corporation and a C corporation if the same persons own more than 50 percent of the outstanding stock of each corporation;

(xii) a partnership and a person or organization owning more than 50 percent of the capital interest or the profits' interest in that partnership; or

(xiii) two partnerships, if the same person or organization owns more than 50 percent of the capital interests or profits' interests.

(B) As a note to Applicants, nothing in this definition is intended to constitute the Department's determination as to what relationship might cause entities to be considered "related" for various purposes under the Code.

(72) Residential Development - Any Development that is comprised of at least one "Unit" as such term is defined in paragraph (85) of this subsection.

(73) Rules - The Department's low income housing tax credit Rules as presented in this title.

(74) Rural Area – An area that is located:

(A) outside the boundaries of a primary metropolitan statistical area or a metropolitan statistical area;

(B) within the boundaries of a primary metropolitan statistical area or a metropolitan statistical area, if the statistical area has a population of 20,000 or less and does not share a boundary with an urban area; or

(C) in an area that is eligible for funding by TxRD-USDA.

(75) Rural Development Agency – the state agency designated by the Legislature as primarily responsible for rural area development in the state. Such agency is currently ORCA.

(76) Rural Development - A Development located within a Rural Area and for which the Applicant applies for tax credits under the Rural Set Aside.

(77) Selection Criteria - Criteria used to determine housing priorities of the State under the Low Income Housing Tax Credit Program as specifically defined in §49.7(f) of this title.

(78) Set Aside – A reservation of a portion of the available Housing Tax Credits to provide financial support for specific types of housing or geographic locations or serve specific types of Applicants on a priority basis as permitted by the Qualified Allocation Plan.

(79) State Housing Credit Ceiling - The limitation imposed by the Code, §42(h), on the aggregate amount of housing credit allocations that may be made by the Department during any calendar year, as determined from time to time by the Department in accordance with the Code, §42(h)(3).

(80) Student Eligibility - Per the Code, §42(I)(3)(D), "A unit shall not fail to be treated as a low-income unit merely because it is occupied:

(A) by an individual who is:

(i) a student and receiving assistance under title IV of the Social Security Act (42 U.S.C. §§ 601 et seq.), or

(ii) enrolled in a job training program receiving assistance under the Job Training Partnership Act (29 USCS §§ 1501 et seq., generally; for full classification, consult USCS Tables volumes) or under other similar Federal, State, or local laws, or

(B) entirely by full-time students if such students are:

(i) single parents and their children and such parents and children are not dependents (as defined in section 152) of another individual, or

(ii) married and file a joint return.”

(81) Sustaining Occupancy - The figure at which occupancy income is equal to all operating expenses and mandatory debt service requirements for a Development.

(82) Tax Exempt Bond Development - A Development which receives a portion of its financing from the proceeds of tax exempt bonds which are subject to the state volume cap as described in the Code, §42(h)(4)(B).

(83) Threshold Criteria - Criteria used to determine whether the Development satisfies the minimum level of acceptability for consideration established in this title.

(84) Total Housing Development Cost - The total of all costs incurred or to be incurred by the Development Owner in acquiring, constructing, rehabilitating and financing a Development, as determined by the Department based on the information contained in the Applicant's Application. Such costs include reserves and any expenses attributable to commercial areas. Costs associated with the sale or use of tax credits to raise equity capital shall also be included in the Total Housing Development Cost. Such costs include but are not limited to syndication and partnership organization costs and fees, filing fees, broker commissions, related attorney and accounting fees, appraisal, engineering, and the environmental site assessment.

(85) Town Home - Each Town Home living unit is one of a group of no less than four units that are adjoined by common walls. Town Homes shall not have more than two walls in common with adjacent units. Town Homes shall not have other units above or below another unit. Town Homes shall not share a common back wall. Town Homes shall have individual exterior entries.

(86) TxRD-USDA - The Rural Development (RD) services of the United States Department of Agriculture (USDA) serving the State of Texas (formerly known as TxFmHA) or its successor.

(87) Unit - Any residential rental unit in a Development consisting of an accommodation including a single room used as an accommodation on a non-transient basis, that contains separate and complete physical facilities and fixtures for living, sleeping, eating, cooking and sanitation.

### **§49.3. State Housing Credit Ceiling.**

(a) The Department shall determine the State Housing Credit Ceiling for each calendar year as provided in the Code, §42(h)(3)(C).

(b) The Department shall publish each such determination in the Texas Register within 30 days after notification by the Internal Revenue Service.

(c) The aggregate amount of Housing Credit Allocations made by the Department during any calendar year shall not exceed the State Housing Credit Ceiling for such year as provided in the Code, §42. Housing Credit Allocations made to Tax Exempt Bond Developments are not included in the State Housing Credit Ceiling.

### **§49.4. Application Submission; Pre-Application Submission; Unacceptable Applications; Availability of Pre-Application and Application; Confidential Information; Required Application Notifications and Receipt of Public Comment; Board Recommendations; Board Decisions; Commitment Notices and Determination Notices; Board Reevaluation; Appeals Process; Waiting List; Agreements and Election Statement; Cost Certification and Carryover Filings; LURA.**

(a) Application Submission. Any Applicant requesting a Housing Credit Allocation or a Determination Notice must submit an Application to the Department during the Application Acceptance Period. A complete Application may be submitted at any time during the Application Acceptance Period, and is not limited to submission after the close of the Pre-Application Cycle. However, a complete Application received during the Pre-Application Cycle will initially only be reviewed for Pre-Application Criteria. The remainder of the Application will be reviewed once the results of the Pre-Application Cycle have been announced. Only one Application may be submitted for each site. While the Application Acceptance Period is open, Applicants may withdraw their Application and subsequently file a new Application along with the required Application fee. The Department is authorized to request the Applicant to provide additional information it deems relevant to clarify information contained in the Application or to submit documentation for items it considers to be an Administrative Deficiency. An Applicant may not change or supplement an Application in any manner after the filing deadline, except as it relates to a direct request from the Department to remedy an Administrative Deficiency as further described in §49.2(2) of this title or to the amendment of an application after an allocation of tax credits as further described in §49.7(k) of this title.



(b) Pre-Application Submission. Any Applicant requesting a Housing Credit Allocation may submit a Pre-Application to the Department during the Pre-Application Acceptance Period. A complete Application may be submitted at any time during the Application Acceptance Period, and is not limited to submission after the close of the Pre-Application Cycle. However, a complete Application received during the Pre-Application Cycle will initially only be reviewed for Pre-Application Criteria. The remainder of the Application will be reviewed once the results of the Pre-Application Cycle have been announced. Only one Pre-Application may be submitted by an Applicant for each site. The Pre-Application submission is a voluntary process. While the Pre-Application Acceptance Period is open, Applicants may withdraw their Pre-Application and subsequently file a new Pre-Application along with the required Pre-Application Fee. The Department is authorized to request the Applicant to provide additional information it deems relevant to clarify information contained in the Pre-Application or to submit documentation for items it considers to be an Administrative Deficiency. The Department shall reject and return to the Applicant any Pre-Application assessed by the Department that fails to satisfy the Pre-Application Threshold Criteria required by the Board in the Qualified Allocation Plan. The rejection of a Pre-Application shall not preclude an Applicant from submitting an Application with respect to a particular Development or site at the appropriate time.

(c) Unacceptable Applications. Applications involving Ineligible Building Types will not be considered for allocation of tax credits under this QAP and the Rules. Applications that show Material Deficiencies (which are not corrected within the applicable correction period) will be terminated, and the Applicant may only re-apply if the Application Acceptance Period is still open. An Application that does not fulfill the requirements of this Qualified Allocation Plan and Rules and the current Application Submission Procedures Manual will be deemed not to have been timely filed and the Department shall not be deemed to have accepted the Application.

(d) Availability of Pre-Application and Application. Pre-Applications and Applications for tax credits are public information and are available upon request after the Pre-Application and Application Acceptance Periods close, respectively. All Pre-Applications and Applications, including all exhibits and other supporting materials, except Exhibit 109, will be made available for public disclosure immediately after the Pre-Application and Application periods close, respectively. The content of Exhibit 109 may still be made available for public disclosure upon request if the Attorney General's office deems it is not protected from disclosure by the Texas Public Information Act.

(e) Confidential Information. The Department may treat the financial statements of any Applicant as confidential and may elect not to disclose those statements to the public. A request for such information shall be processed in accordance with §552.305 of the Government Code.

(f) Required Application Notifications, Receipt of Public Comment, and Meetings with Applicants.

(1) Within approximately seven business days of the close of the Pre-Application Acceptance Period, the Department shall publish a Pre-Application Submission Log on its web site. Such log shall contain the Development name, address, set-aside, number of units, requested credits, owner contact name and phone number.

(2) Approximately 30 days before the close of the Application Acceptance Period, the Department will release the evaluation and assessment of the Pre-Applications on its web site.

(3) Within approximately 15 business days of the close of the Application Acceptance Period, the Department shall:

(A) publish an Application submission log, as further described in §49.12(b) of this title, on its web site.

(B) give notice of a proposed Development in writing to the:

(i) mayor or other equivalent chief executive officer of the municipality, if the Development or a part thereof is located in a municipality; otherwise the Department shall notify the chief executive officer of the county in which the Development or a part thereof is located, to advise such individual that the Development or a part thereof will be located in his/her jurisdiction and request any comments which such individual may have concerning such Development. If the local municipal authority expresses opposition to the Development, the Department will give consideration to the objections raised and will visit the proposed site or Development within 30 days of notification to conduct a physical inspection of the Development site and consult with the mayor or county judge before the Application is scored, if opposition is received prior to scoring being completed.

(ii) state representative and state senator representing the area where a Development would be located. The state representative or senator may hold a community meeting at which the Department shall provide appropriate representation.

(C) The elected officials identified in clauses (i) and (ii) of subparagraph (B) of this paragraph will be provided an opportunity to comment on the Application during the Application evaluation process.

(4) The Department shall hold at least three public hearings in different regions of the state to receive comment on the submitted Applications and on other issues relating to the Low Income Housing Tax Credit Program.

(5) The Department shall provide notice of and information regarding public hearings, board meetings and application opening and closing dates relative to housing tax credits to local housing departments, to appropriate newspapers of general or limited circulation that serve the community in which a proposed Development is to be located,

to nonprofit organizations, to on-site property managers of occupied developments that are the subject of Applications for posting in prominent locations at those Developments, and to any other interested persons including community groups, who request the information and shall post all such information to its web site.

(6) Approximately forty days prior to the date of the Board Meeting at which the issuance of Commitment Notices or Determination Notices shall be discussed, the Department will notify each Applicant of the receipt of any opposition received by the Department relating to his or her Development at that time.

(7) Not later than the third working day after the date of the relevant determinations, the results of each stage of the Application process, including the results of the application scoring and underwriting phases and the allocation phase, will be posted to the Department's web site.

(8) At least thirty days prior to the date of the Board meeting at which the issuance of Commitment Notices or Determination Notices shall be discussed, the Department will:

(A) provide the application scores to the Board;

(B) if feasible, post to the Department's web site the entire Application, including all supporting documents and exhibits, the Application Log, a scoring sheet providing details of the Application score, and any other documents relating to the processing of the Application.

(9) A summary of comments received by the Department on specific Applications shall be part of the documents required to be reviewed by the Board under this subsection if it is received 30 business days prior to the date of the Board Meeting at which the issuance of Commitment Notices or Determination Notices shall be discussed. Comments received after this deadline will not be part of the documentation submitted to the Board. However, a public comment period will be available prior to the Board's decision, at the Board meeting where tax credit allocation decisions will be made.

(10) Notice of Selection Criteria Scoring. When all Applications have been scored, the Department shall publish the results of the scoring on its web site.

(11) Not later than the 120<sup>th</sup> day after the date of the initial issuance of Commitment Notices for housing tax credits, the Department shall provide an Applicant who did not receive a commitment for housing tax credits with an opportunity to meet and discuss with the Department the Application's deficiencies, scoring and underwriting.

(g) Board Recommendations. After eligible Applications have been evaluated, ranked and underwritten in accordance with the QAP and the Rules, the Department staff shall make its recommendations to the Executive Award and Review Advisory Committee. This Committee will develop funding priorities and shall make allocation recommendations to the Board. Such recommendation and supporting documentation shall be made in advance of the meeting at which the issuance of Commitment Notices or Determination Notices shall be discussed. The Committee will provide written, documented recommendations to the Board which will include at a minimum the financial or programmatic viability of each Application and a list of all submitted Applications which enumerates the reason(s) for the Development's proposed selection or denial, including all evaluation factors provided in §49.7(c) of this title that were used in making this determination. The Board shall issue commitments for available housing tax credits based on the application evaluation process identified in §49.7 of this title. Concurrently with the initial issuance of commitments for housing tax credits, the Board shall establish a waiting list of additional Applications ranked by score in descending order of priority based on Set Aside categories and regional allocation goals. On awarding tax credit allocations, the Board shall document the reasons for each Development's selection, including an explanation of all discretionary factors used in making its determination, and the reasons for any decision that conflicts with the recommendations made by Department staff. The Board may not make, without good cause, an allocation decision that conflicts with the recommendations of Department staff.

(1) A Commitment Notice shall not be issued with respect to any Development for an unnecessary amount or where the cost for the total development, acquisition, construction or rehabilitation exceeds the limitations established from time to time by the Department and the Board, unless the Department staff make a recommendation to the Board based on the need to fulfill the goals of the Program as expressed in this QAP and Rules, and the Board accepts the recommendation. The Department's recommendation to the Board shall be clearly documented.

(2) A Commitment Notice shall not be issued with respect to any Development in violation of subsection §49.9(b) of this title, unless the Committee makes a recommendation to the Board based on the need to fulfill the goals of the Program as expressed in this QAP and Rules, and the Board accepts the recommendation. The Department's recommendation to the Board shall be clearly documented.

(3) The Department will reduce the Applicant's estimate of Developer's and/or Contractor fees in instances where these exceed the fee limits determined by the Department. In the instance where the Contractor is an Affiliate of the Development Owner and both parties are claiming fees, Contractor's overhead, profit, and general requirements, the Department will reduce the total fees estimated to an acceptable level. Further, the Department shall deny or reduce the amount of low income housing tax credits on any portion of costs which it deems excessive or unreasonable. The Department also may require bids or third party estimates in support of the costs proposed by any Applicant.

(h) Board Decisions. The Board's decisions shall be based upon its evaluation of the Development's consistency with the criteria and requirements set forth in the QAP and the Rules.

(1) In making a determination to allocate tax credits, the Department staff and Board shall be authorized not to rely solely on the number of points scored by an Applicant. They shall in addition, be entitled to take into account, as appropriate, the factors described in §49.7(b) through (d) of this title. If the Board disapproves or fails to act upon the Application, the Department shall issue to the Development Owner a written notice stating the reason(s) for the Board's disapproval or failure to act.

(2) Before the Board approves any Development Application, the Department shall assess the compliance history of the Applicant and any Affiliate of the Applicant with respect to all applicable requirements; and the compliance issues associated with the proposed Development. The Committee shall provide to the Board a written report regarding the results of the assessments. The written report will be included in the appropriate Development file for Board and Department review. The Board shall fully document and disclose any instances in which the Board approves a Development Application despite any noncompliance associated with the Development, Applicant or Affiliate.

(i) Commitment Notices and Determination Notices. If the Board approves the Application, the Department will:

(1) if the Application is for a Housing Credit Allocation, issue a Commitment Notice to the Development Owner which shall:

(A) confirm that the Board has approved the Application; and

(B) state the Department's commitment to make a Housing Credit Allocation to the Applicant in a specified amount, subject to the feasibility determination described at §49.11(b) of this title, compliance by the Development Owner with the remaining requirements of this chapter, and any other conditions set forth therein by the Department. This commitment shall expire on the date specified therein unless the Development Owner indicates acceptance of the commitment by executing the Commitment Notice or Determination Notice, pays the required fee specified in §49.13 of this title, and satisfies any other conditions set forth therein by the Department. A Development Owner may request an extension of the Commitment Notice expiration date by submitting extension request and associated extension fee as described in §49.13(j) of this title. In no event shall the expiration date of a Commitment Notice be extended beyond the last business day of the applicable calendar year.

(2) if the Application is with respect to a Tax Exempt Bond Development, issue a Determination Notice to the Development Owner which shall:

(A) confirm the Board's determination that the Development satisfies the requirements of this QAP; and

(B) state the Department's commitment to issue IRS Form(s) 8609 to the Applicant in a specified amount, subject to the requirements set forth at §49.7(i) of this title, compliance by the Development Owner with all applicable requirements of this title, and any other conditions set forth therein by the Department. The Determination Notice shall expire on the date specified therein unless the Development Owner indicates acceptance by executing the Determination Notice and paying the required fee specified in §49.13 of this title. The Determination Notice shall also expire unless the Development Owner satisfies any conditions set forth therein by the Department within the applicable time period.

(3) notify, in writing, the mayor or other equivalent chief executive officer of the municipality in which the Property is located informing him/her of the Board's issuance of a Commitment Notice or Determination Notice, as applicable.

(j) Board Reevaluation. Regardless of project stage, the Board must reevaluate a Development that undergoes a substantial change between the time of initial Board approval of the Development and the time of issuance of a Commitment Notice or Determination Notice for the Development. For the meaning of this subsection, substantial change shall be those items identified in §49.7(k)(4) of this title. The Board may revoke any Commitment Notice or Determination Notice issued for a Development that has been unfavorably reevaluated by the Board.

(k) Appeals Process. An Applicant may appeal decisions made by the Department.

(1) The decisions that may be appealed are identified in subparagraphs (A) through (C) of this paragraph.

(A) a determination regarding the Application's satisfaction of:

(i) Pre-Application or Application Threshold Criteria;

(ii) Underwriting Criteria;

(B) the scoring of the Application under the Pre-Application or Application Selection Criteria; and

(C) a recommendation as to the amount of housing tax credits to be allocated to the Application.

(2) An Applicant may not appeal a decision made regarding an Application filed by another Applicant.

(3) An Applicant must file its appeal in writing, with the Department not later than the seventh day after the date the Department publishes the results of the Application evaluation process identified in §49.7 of this title. In the appeal, the Applicant must specifically identify the Applicant's grounds for appeal, based on the original Application and additional documentation filed with the original Application. If the appeal relates to the amount of housing tax credits recommended to be allocated, the Department will provide the Applicant with the underwriting report upon request.

(4) The Executive Director of the Department shall respond in writing to the appeal not later than the 14th day after the date of receipt of the appeal. If the Applicant is not satisfied with the Executive Director's response to the appeal, the Applicant may appeal directly in writing to the Board, provided that an appeal filed with the Board under this subsection must be received by the Board before:

(A) the seventh day preceding the date of the board meeting at which the relevant allocation decision is expected to be made; or

(B) the third day preceding the date of the board meeting described by subparagraph (A) of this paragraph, if the Executive Director does not respond to the appeal before the date described by subparagraph (A) of this paragraph.

(5) Board review of an appeal under paragraph (4) of this subsection is based on the original Application and additional documentation filed with the original Application. The Board may not review any information not contained in or filed with the original Application. The decision of the Board regarding the appeal is final.

(6) The Department will post to its web site an appeal filed with the Department or Board and any other document relating to the processing of the appeal.

(l) Waiting List. If the entire State Housing Credit Ceiling for the applicable calendar year has been committed or allocated in accordance with this chapter, the Board shall generate a waiting list. All such waiting list Applications will be weighed one against the other and a priority list shall be developed by the Board. If at any time prior to the end of the Application Round, one or more Commitment Notices expire and a sufficient amount of the State Housing Credit Ceiling becomes available, the Board shall issue a Commitment Notice to Applications on the waiting list in order of priority subject to the amount of returned credits, the regional allocation goals and the Set Aside categories, including the 10% Nonprofit Set-Aside allocation required under the Code, §42(h)(5). In the event that the Department makes a Commitment Notice or offers a commitment within the last month of the calendar year, it will require immediate action by the Applicant to assure that an allocation or Carryover Allocation can be issued before the end of that same calendar year. At the end of each calendar year, all Applications which have not received a Commitment Notice shall be deemed terminated, unless the Department shall determine to retain or act upon such Applications as provided in §49.17 of this title. The Applicant may re-apply to the Department during the next Application Acceptance Period.

(m) Agreement and Election Statement. Together with or following the Development Owner's acceptance of the commitment or determination, the Development Owner may execute an Agreement and Election Statement, in the form prescribed by the Department, for the purpose of fixing the applicable credit percentage for the Development as that for the month in which the commitment was accepted (or the month the bonds were issued for Tax Exempt Bond Developments), as provided in the Code, §42(b)(2). For non Tax Exempt Bond Developments, the Agreement and Election Statement shall be executed by the Development Owner no later than five days after the end of the month in which the offer of commitment was accepted. Current Treasury Regulations, §1.42-8(a)(1)(v), suggest that in order to permit a Development Owner to make an effective election to fix the applicable credit percentage for a Development, the Commitment Notice must be executed by the Department and the Development Owner in the same month. The Department staff will cooperate with a Development Owner, as needed, to assure that the Commitment Notice can be so executed.

(n) Cost Certification or Carryover Filings. Developments that will be placed in service and request IRS Forms 8609 in the year the Commitment Notice was issued must submit the required Cost Certification documentation and the compliance and monitoring fee to the Department by the second Friday in November of that same year. All other Developments which received a Commitment Notice, must submit the Carryover documentation to the Department no later than the second Friday in October of the year in which the Commitment Notice is issued. The Carryover Allocation must be properly completed and delivered to the Department as prescribed by the Carryover Allocation Procedures Manual. All complete Carryover filings will be reviewed and executed by the Department no later than 90 days from the date of receipt of the Carryover documentation. The Department will issue IRS Forms 8609 no later than 90 days from the date of receipt of the Cost Certification documentation, so long as all subsequent documentation requested by the Department related to the processing of the Cost Certification documentation has been provided on or before the seventy-fifth day from the date of receipt of the original Cost Certification documentation. Any deficiency letters issued to the Owner pertaining to the Cost Certification documentation will also be copied to the syndicator.

(o) Land Use Restriction Agreement (LURA). Prior to the Department's issuance of the IRS Form 8609 declaring that the Development has been placed in service for purposes of the Code, §42, Development Owners must date, sign and acknowledge before a notary public a LURA and send the original to the Department for execution. The Development Owner shall then record said LURA, along with any and all exhibits attached thereto, in the real property records of the county where the Development is located and return the original document, duly certified as to recordation by the appropriate county official, to the Department. If any liens (other than mechanics' or materialmen's liens) shall have been recorded against the Development and/or the Property prior to the recording of the LURA, the Development Owner shall obtain the subordination of the rights of any such lienholder, or other effective consent, to the survival of certain obligations contained in the LURA following the foreclosure of any such lien. Receipt of such certified recorded original

LURA by the Department is required prior to issuance of IRS Form 8609. A representative of the Department shall physically inspect the Development for compliance with the Application and the representatives, warranties, covenants, agreements and undertakings contained therein before the IRS Form 8609 is issued, but in no event later than the end of the second calendar year following the year the last building in the Development is placed in service. The Development Owner for Tax Exempt Bond Developments shall obtain a subordination agreement wherein the lien of the mortgage is subordinated to the LURA.

**§49.5. Ineligible and Disqualified Applications; Debarment from Program Participation.**

(a) An Application will be ineligible if a member of the Development Team has been or is:

(1) Barred, suspended, or terminated from procurement in a state or federal program or listed in the List of Parties Excluded from Federal Procurement or Non-Procurement Programs; or,

(2) convicted of, under indictment for, or on probation for a state or federal crime involving fraud, bribery, theft, misrepresentations of material facts, misappropriation of funds, or other similar criminal offenses; or,

(3) subject to enforcement action under state or federal securities law, or is the subject of an enforcement proceeding with any Governmental Entity unless such action has been concluded and no adverse action or finding (or entry into a consent order) has been taken with respect to such member.

(b) Additionally, the Department will disqualify, and may disbar, an Application if it is determined by the Department that those issues identified in paragraphs (1) through (9) exist. A person debarred by the Department from participation in the program may appeal the person's debarment to the Board. The Department shall debar a person for the longer of, one year from the date of debarment, or until the violation causing the debarment has been remedied.

(1) fraudulent information, knowingly false documentation or other material misrepresentation has been provided in the Application or other information submitted to the Department. The aforementioned policy will apply at any stage of the evaluation or approval process; or,

(2) at the time of application or at any time during the two-year period preceding the date the application round begins, the Applicant or a Related Party is or has been:

(A) a member of the Board; or

(B) the executive director, a deputy director, the director of housing programs, the director of compliance, the director of underwriting, or the Low Income Housing Tax Credit Program manager employed by the Department.

(3) the Applicant or any Person, general partner, general contractor and their respective principals or Affiliates active in the ownership or control of other low income housing tax credit property in the state of Texas who received an allocation of tax credits in the 2001 Application Round but did not close the construction loan as required under the Carryover Allocation (including any extension period granted by the Board) except for reasons beyond the control of the Applicant as determined by the Department; or,

(4) the Applicant proposes to replace in less than 15 years any private activity bond financing of the development described by the Application, unless:

(A) the applicant proposes to maintain for a period of 30 years or more 100 percent of the development units supported by low income housing tax credits as rent-restricted and exclusively for occupancy by individuals and families earning not more than 50 percent of the area median income, adjusted for family size; and

(B) at least one-third of all the units in the development are public housing units or Section 8 Development-based units; or,

(5) the Applicant or any Person, general partner, general contractor and their respective principals or Affiliates active in the ownership or control of other low income housing tax credit property has failed to place in service buildings or removed from service buildings for which credits were allocated (either Carryover Allocation or issuance of 8609s). The Department may consider the facts and circumstances on a case-by-case basis, including whether the credits were returned prior to the expiration date for re-issuance of the credits, in its sole determination of Applicant eligibility; or,

(6) the Applicant or any Person, general partner, general contractor and their respective principals or Affiliates active in the ownership or control of other low income rental housing property in the state of Texas funded by the Department that is in Material Non-Compliance with the LURA (or any other document containing an Extended Low Income Housing Commitment) or the program rules in effect for such property on the date the Pre-Application Acceptance Period opens or upon the date of filing Volume I of the Application for a Tax Exempt Bond Development. Any corrective action documentation affecting the Material Non-Compliance status score for Applicant's competing in the 2002 Application Round must be received by the Department no later than November 15, 2001. The Department may take into consideration the representations of the Applicant regarding compliance violations described in §49.7(e)(7)(C) and (D) of this title; however, the records of the Department are controlling; or,

(7) the Applicant or any Person, general partner, general contractor and their respective principals or Affiliates active in the ownership or control of other low income rental housing tax credit property outside of the state of Texas has incidence of non-compliance with the LURA or the program rules in effect for such tax credit property as reported on

## 2001 Low Income Housing Tax Credit Program Qualified Allocation Plan and Rules

Exhibits 105C and 105D and/or as determined by the state regulatory authority for such state and such non-compliance is determined to be Material Non-Compliance by the Department; or,

(8) the Development is located on a site that has been determined to be “unacceptable” by the Department staff; or

(9) the Applicant or a Related Party, or any person who is active in the construction, rehabilitation, ownership, or control of the Development including a general partner or general contractor and their respective principals or affiliates, or person employed as a lobbyist or in another capacity on behalf of the Development, communicates with any Board member or member of the Committee with respect to the Development during the period of time starting with the time an Application is submitted until the time the Board makes a final decision with respect to any approval of that Application, unless the communication takes place at any board meeting or public hearing held with respect to that Application.

(c) Notwithstanding any other provision of this section, the Department may not allocate tax credits to a Development proposed by an Applicant unless the Department first determines that:

(1) the housing development is necessary to provide needed decent, safe, and sanitary housing at rentals or prices that individuals or families of low and very low income or families of moderate income can afford;

(2) the housing sponsor undertaking the proposed housing development will supply well-planned and well-designed housing for individuals or families of low and very low income or families of moderate income;

(3) the housing sponsor is financially responsible;

(4) the housing sponsor is not, or will not enter into a contract for the proposed housing development with, a housing developer that:

(A) is on the Department's debarred list, including any parts of that list that are derived from the debarred list of the United States Department of Housing and Urban Development;

(B) breached a contract with a public agency; or

(C) misrepresented to a subcontractor the extent to which the developer has benefited from contracts or financial assistance that has been awarded by a public agency, including the scope of the developer's participation in contracts with the agency and the amount of financial assistance awarded to the developer by the agency;

(5) the financing of the housing development is a public purpose and will provide a public benefit; and

(6) the housing development will be undertaken within the authority granted by this chapter to the housing finance division and the housing sponsor.

(d) Representation by Former Board Member or Other Person

(1) A former board member or a former director, deputy director, director of housing programs, director of compliance, director of underwriting, or Low Income Housing Tax Credit Program Manager employed by the Department may not:

(A) for compensation, represent an Applicant for an allocation of tax credits or a Related Party before the second anniversary of the date that the Board member's, director's, or manager's service in office or employment with the Department ceases;

(B) represent any Applicant or Related Party or receive compensation for services rendered on behalf of any Applicant or Related Party regarding the consideration of an Application in which the former board member, director, or manager participated during the period of service in office or employment with the Department, either through personal involvement or because the matter was within the scope of the board member's, director's, or manager's official responsibility; or for compensation, communicate directly with a member of the legislative branch to influence legislation on behalf of an Applicant or Related Party before the second anniversary of the date that the board member's, director's, or manager's service in office or employment with the Department ceases.

(2) A person commits an offense if the person violates this section. An offense under this section is a Class A misdemeanor. **§49.6. Regional Allocation Formula and Set-Asides.**

(a) Regional Allocation Formula. As required by Section 2306.111 of the Texas Government Code, the Department will use a regional distribution formula developed by the Department to distribute credits from the State Housing Credit Ceiling. The formula will be based on the need for housing assistance, and the availability of housing resources, and the Department will use the information contained in the Department's annual state low income housing plan and other appropriate data to develop the formula. This formula will establish targeted tax credit amounts for each of the state service regions. Each region's targeted tax credit amount will be published in the Texas Register and on the Department's web site concurrently with the publication of the QAP.

(b) Set-Asides. The regional credit distribution amounts are additionally subject to the factors presented in paragraphs (1) through (5) of this subsection:

(1) At least 10% of the State Housing Credit Ceiling for each calendar year shall be allocated to Qualified Nonprofit Developments which meet the requirements of the Code, §42(h)(5). Qualified Nonprofit Organizations must have a controlling interest in the Qualified Nonprofit Development applying for this set-aside. If the organization's Application is filed on behalf of a limited partnership, the Qualified Nonprofit Organization must be the managing

General Partner. If the organization's Application is filed on behalf of a limited liability company, the Qualified Nonprofit Organization must be the Managing Member.

(2) At least 15% of the State Housing Credit Ceiling for each calendar year shall be allocated to Developments which meet the Rural Development definition or are located in Prison Communities. Rural Developments applying for greater than 76 Units will be ineligible for the Rural Set-Aside. Of this 15% allocation, 25% will be set-aside for projects financed through Rural Development (TxRD-USDA). Projects financed through TxRD-USDA's 538 Guaranteed Rural Rental Housing Program will not be considered under the 25% portion. Should there not be sufficient qualified applications submitted for the TxRD-USDA set-aside, then the credits would revert to projects that meet the Rural Project definition or are located in Prison Communities.

(3) At least 15% of the State Housing Credit Ceiling will be allocated to the At-Risk Development Set-Aside. Through this set-aside, the Department, to the extent possible, shall allocate credits to Applications involving the preservation of developments designated as At-Risk Developments as defined in §49.2(14) of this title and in both urban and rural communities in approximate proportion to the housing needs of each uniform state service region.

(4) At least 60% of the State Housing Credit Ceiling will be allocated to General Set-Aside.

(5) At least 15% of the State Housing Credit Ceiling for each calendar year shall be allocated to Qualified Elderly Developments. Qualified Elderly Developments will not constitute an additional exclusive set-aside; however at least 15% of Developments allocated through the set-asides identified in paragraphs (1) through (4) of this subsection will also be Qualified Elderly Developments. Prior to making recommendations to the Board with respect to Applications which, if funded in accordance with such recommendations, would total, taking into account all Commitment Notices previously issued during the calendar year, at least 85% of the State Housing Credit Ceiling for such year, the Committee shall advise the Board as to the percentage of Qualified Elderly Developments which have received commitments or are recommended to receive commitments for the year.

(c) If any amount of housing tax credits remain after the initial allocation of housing tax credits among the regions and set-asides, the Department may redistribute the credits amongst the different regions and set asides depending on the quality of Applications submitted as evaluated under the factors described in §49.7(c) and (d) of this title and the level of demand exhibited in the regions during the Allocation Round. However as described in paragraph (1) of this subsection, no more than 90% of the State's Housing Credit Ceiling for the calendar year may go to Developments which are not Qualified Nonprofit Developments. If credits will be transferred from a region which does not have enough qualified applications to meet its regional credit distribution amount, then those credits will be apportioned to the other regions based on oversubscription in the other regions and the quality of the Applications. If forward commitments are approved by the Board, they shall be distributed with regard to the relative regional percentages established by the regional distribution formula. The Department will provide for the reallocation of tax credits as described in this subsection if any Commitment Notice is terminated.

**§49.7. Pre-Application Evaluation Process and Criteria; Application Evaluation Process; Evaluation Factors; Tie Breaker Criteria; Threshold Criteria; Selection Criteria; Credit Amount; Limitations on the Size of Developments; Tax Exempt Bond Financed Developments; Adherence to Obligations; Amendment of Applications; Housing Tax Credit and Ownership Transfers.**

(a) Pre-Application Evaluation Process and Criteria. Eligible Pre-Applications will be evaluated for Pre-Application Threshold Criteria, Pre-Application Selection Criteria, and as requested, adherence to the Subsection §49.9(b) of this title, in accordance with this section of the QAP and the Rules. Applications that have new TxRD-USDA financing for either new construction or rehabilitation, as evidenced by confirmation from the state office of TxRD, are exempted from the Pre-Application Evaluation Process and are not eligible to receive points for submission of a Pre-Application. Applications for rehabilitation of TxRD properties that do not have new financing from TxRD-USDA are not exempt from the Pre-Application Evaluation Process and are eligible to receive points for submission of a Pre-Application.

(1) Pre-Application Threshold Criteria and Review. Applicants submitting a Pre-Application will be required to submit information demonstrating their satisfaction of the Pre-Application Threshold Criteria. The Pre-Applications not meeting the Pre-Application Threshold Criteria will be returned to the Applicant without further review and with a written notice to the effect that the Pre-Application Threshold Criteria have not been met. The Department shall not be responsible for the Applicant's failure to meet the Pre-Application Threshold Criteria and any failure of the Department's staff to notify the Applicant of such inability to satisfy the Pre-Application Threshold Criteria shall not confer upon the Applicant any rights to which it would not otherwise be entitled. The Pre-Application Threshold Criteria include:

(A) Submission of the Uniform Application and any other supporting forms required by the Department;

(B) Evidence of site control and site depiction as evidenced by the documentation required under Sections 49.7(e)(5)(A) and 49.7(e)(3)(H)(i) of this title;

(C) Evidence of appropriate zoning or steps toward zoning as evidenced by the documentation required under Section 49.7(e)(5)(B) of this title; and

(D) Evidence of notification to public officials as evidenced by the documentation required under Section 49.7(e)(6)(B).

(2) Pre-Application Selection Criteria and Review. Only Pre-Applications which have satisfied all of the Pre-Application Threshold Criteria requirements set forth in paragraph (1) of this subsection and for which the Applicant has been found to be in compliance, will be reviewed according to the points scored under the Pre-Application Selection Criteria, which include all of the Selection Criteria, and supporting documentation to justify that Criteria, identified in §49.7(f) of this title.

(3) While not required, an Applicant submitting a Pre-Application may also submit a Market Study, in accordance with Exhibit 49.7(e)(12)(B), if they would like the Department to review the Development as it relates to §49.9(b) of this title.

(4) Pre-Application Results and Rules. After the Pre-Applications have been reviewed for Pre-Application Threshold Criteria and Pre-Application Selection Criteria, the Developments having satisfied the requirements of the Pre-Application Threshold Criteria will be released with their Pre-Application Selection Criteria scores, sorted by region. The order and scores of those Developments released on the Pre-Application log do not represent a commitment on the part of the Department or the Board to allocate tax credits to any Development and the Department bears no liability for decisions made by Applicants based on the results of the Pre-Application Log. Inclusion of a Development on the Pre-Application Log does not ensure that an Applicant will receive Bonus Points for a Pre-Application. To receive Bonus Points an Applicant must meet the requirements of §49.7(f)(10) of this title.

(b) Application Evaluation Process. After eligible Applications have been evaluated, ranked and underwritten in accordance with this section of the QAP and the Rules, an application may be eligible for a recommendation to the Board as described in §49.4(g) of this title.

(1) Threshold Criteria Review. Applications will be initially evaluated against the Threshold Criteria. Applications not meeting Threshold Criteria will be terminated, unless the Department determines that the failure to meet the Threshold Criteria is the result of correctable deficiencies, in which event the Applicant shall be given an opportunity to correct such deficiencies. Applications not meeting Threshold Criteria will be rejected and will be returned to the Applicant without further review with a written notice to the effect that the Threshold Criteria have not been met. The Department shall not be responsible for the Applicant's failure to meet the Threshold Criteria, and any failure of the Department's staff to notify the Applicant of such inability to satisfy the Threshold Criteria shall not confer upon the Applicant any rights to which it would not otherwise be entitled. Applications will also be reviewed to ensure that they are not in violation of §49.9(b) of this title, relating to concentration.

(2) Selection Criteria Review. For an Application to be considered under the Selection Criteria, the Applicant must demonstrate that the Development meets all of the Threshold Criteria requirements set forth in subsection (e) of this section. Applications that satisfy the Threshold Criteria will then be scored and ranked according to the Selection Criteria listed in subsection (f) of this section. The Department may not award points for a scoring criterion that is disproportionate to the degree to which a proposed Development complied with that criterion. Applications not scored by the Department's staff shall be deemed to have the points allocated through self-scoring by the Applicants until actually scored. This shall apply only for ranking purposes.

(3) Underwriting Evaluation and Criteria. After the Application is scored under the Selection Criteria, the Department will assign the Development for evaluation of compliance status by the Department's compliance division and financial feasibility by the Department's credit underwriting division.

(A) The Department will evaluate compliance status and underwrite the Applications ranked under paragraph (2) of this subsection beginning with the Applications with the highest scores in each region and in each Set Aside identified in §49.6 of this title. Based on Application rankings, the Department shall continue to underwrite Applications until the Department has processed enough Applications satisfying the Department's underwriting criteria to enable the allocation of all available housing tax credits according to regional allocation goals and Set Aside categories. To enable the Board to establish a Waiting List, the Department shall underwrite as many additional Applications as the Committee and Board consider necessary to ensure that all available housing tax credits are allocated within the period required by law.

(B) Underwriting of the Development will include a determination by the Department, pursuant to the Code, §42, that the amount of credits recommended for allocation to a Development is necessary for the financial feasibility of the Development and its long-term viability as a qualified low income housing property. In making this determination, the Department will use the guidelines identified in §49.8 of this title and take into account:

- (i) the Development's total development costs;
- (ii) actual or Development's operating expenses and reserves for replacement;
- (iii) Development's sources of financing;
- (iv) proceeds from the syndication of the tax credits;
- (v) the Development's debt coverage ratio; and



(vi) the Development's overall conformance with the Department's underwriting guidelines as described in §49.8 of this title.

(C) The Department may have an outside third party perform the underwriting evaluation to the extent it determines appropriate, consistent with the guidelines outlined in §49.8 of this title. The expense of any third party underwriting evaluation shall be paid by the Applicant prior to the commencement of the aforementioned evaluation.

(4) Site Evaluation. Site conditions shall be evaluated through a physical site inspection by Department staff. Such inspection will evaluate the site based on the Site Evaluation form provided in the Application and provide a site evaluation of "Excellent," "Acceptable," "Poor" or "Unacceptable". The evaluations shall be based on condition of the surrounding neighborhood and proximity to retail, medical, recreational, and educational facilities, and employment centers. The site's visibility to prospective tenants and accessibility of the site via the existing transportation infrastructure and public transportation systems shall be considered. "Unacceptable" sites would include a non-mitigable environmental factor that would impact the health and safety of the residents.

(c) Evaluation Factors. The Committee and Board may choose to evaluate the recommendations of credits for factors other than scoring for one or more of the following reasons:

(1) to serve a greater number of lower income families for fewer credits;

(2) to serve a greater number of lower income families for a longer period of time;

(3) to ensure the Development's consistency with local needs or its impact as part of a revitalization or preservation plan.

(4) to ensure the allocation of credits among as many different entities as practicable without diminishing the quality of the housing that is built as required under the Texas General Appropriations Act applicable to the Department.

(d) Tie Breaker Criteria. In the event that two or more Applications receive the same number of points in any given set-aside category and region and compare equally under the factors described in subsection (c) of this section, the Department will utilize the factors in paragraphs (1) through (9) of this subsection, in the order they are presented, to determine which Development will receive a preference in consideration for a tax credit commitment. As described by these paragraphs, preference in recommending credits for allocation will be given to Developments which are practicable and economically feasible, and which:

(1) serve persons with the lowest percentage of area median family income;

(2) serve low income tenants for the longest period of time, in the form of a longer Compliance Period and/or extended low income use period (as set forth in the LURA);

(3) is located in a Qualified Census Tract, the development of which contributes to a concerted community revitalization plan;

(4) has substantial community support as evidenced by the commitment of local public funds toward the construction, rehabilitation and acquisition and subsequent rehabilitation of the Development or use other funding sources to minimize the amount of subsidy needed to complete the Development;

(5) provides for the most efficient usage of the low income housing tax credit on a per Unit basis;

(6) has a Unit composition that provides the highest percentage of three bedrooms or greater sized Units;

(7) provides integrated, affordable accessible housing for individuals and families with different levels of income;

(8) provides the greatest number of quality residential units;

(9) in the case of Applications involving preservation, support or approval by an association of residents of the multifamily housing development will be considered.

(e) Threshold Criteria. The following Threshold Criteria listed in paragraphs (1) through (12) of this subsection are mandatory requirements at the time of Application submission:

(1) Completion and submission of the Application provided in the Application Submission Procedures Manual, which includes the Uniform Application and any other supplemental forms which may be required by the Department. The Application, at a minimum, will include the names, company names, company contact persons, address and telephone number of any Persons, including Affiliates of those Persons and Related Parties, providing developmental or operations services to the Development including a Development Owner, an architect, an attorney, a tax professional, a property management company, a consultant, a market analyst, a tenant service provider, a syndicator, a real estate broker or agent or a person receiving a fee in connection with services usually provided by a real estate broker or agent, the owners of the property on which the Development is located at the time the Application is submitted, a developer, and a builder or general contractor.

(2) Completion and submission of the Site Packet as provided in the Application Submission Procedures Manual.

(3) Exhibit 101. Certifications and Design Items. The "Certification Form" provided in the Application Submission Procedures Manual and supporting documents. This exhibit will provide:

(A) A description of the type of amenities proposed for the development. If fees in addition to rent are charged for amenities reserved for an individual tenant's use (i.e. covered parking, storage, etc.), then the amenity may not be included among those provided to complete this exhibit. Developments with more than 36 units must provide at least four of the amenities provided in clauses (i) through (viii) of this subparagraph. Developments with 36 Units or less, Developments receiving funding from TxRD-USDA, and Preservation Developments must provide at least two of the amenities provided in clauses (i) through (viii) of this subparagraph. Any future changes in these amenities, or substitution of these amenities, may result in a decrease in awarded credits if the substitution or change includes a decrease in cost or in a cancellation of a Commitment Notice or Carryover Allocation if the Threshold Criteria are no longer met.

- (i) full perimeter fencing with controlled gate access;
- (ii) designated playground and equipment;
- (iii) community laundry room and/or laundry hook-ups in Units (no hook-up fees of any kind may be charged to a tenant for use of the hook-ups);
- (iv) furnished community room;
- (v) recreation facilities;
- (vi) public telephone(s) available to tenants 24 hours a day;
- (vii) on-site day care, senior center, or community meals room;
- (viii) computer facilities.

(B) A certification that the Development will adhere to the Texas Property Code relating to security devices and other applicable requirements for residential tenancies, and will adhere at a minimum to the International Building Code as it relates to access, lighting and life safety issues.

(C) A certification that the Applicant is in compliance with with state and federal laws, including but not limited to, fair housing laws, including Chapter 301, Property Code, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. Section 3601 et seq.), and the Fair Housing Amendments Act of 1988 (42 U.S.C. Section 3601 et seq.); the Civil Rights Act of 1964 (42 U.S.C. Section 2000a et seq.); the Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.); and the Rehabilitation Act of 1973 (29 U.S.C. Section 701 et seq.)

(D) A certification that the Applicant will attempt to ensure that at least 30% of the construction and management businesses with which the Applicant contracts in connection with the Development are Minority Owned Businesses, and that the Applicant will submit at least once in each 90-day period following the date of the Commitment Notice a report, in a format proscribed by the Department and provided at the time a Commitment Notice is received, on the percentage of businesses with which the Applicant has contracted that qualify as Minority Owned Businesses.

(E) A certification that the Development will comply with the accessibility standards that are required under Section 504, Rehabilitation Act of 1973 (29 U.S.C. Section 794), and specified under 24 C.F.R. Part 8, Subpart C. This includes that for all Developments, a minimum of five percent of the total dwelling Units or at least one Unit, whichever is greater, shall be made accessible for persons with mobility impairments. A Unit that is on an accessible route and is adaptable and otherwise compliant with sections 3–8 of the Uniform Federal Accessibility Standards (UFAS), meets this requirement. An additional two percent of the total dwelling Units, or at least one Unit, whichever is greater, shall be accessible for persons with hearing or visions impairments. Additionally, for Developments designed as Townhomes or other two-story dwelling Units, the Applicant must include one bedroom and one bathroom on the ground level of all Units (this includes market rate and tax credit Units) and meet Fair Housing standards. At the construction loan closing a certification from an accredited architect will be required stating that the Development was designed in conformance with these standards and that all features have been or will be installed to make the Unit accessible for persons with mobility impairments or persons with hearing or vision impairments. A similar certification will also be required after the Development is completed.

(F) A certification that the Development will adhere to the Department's Minimum Standard Energy Saving Devices in the construction of each tax credit Unit identified in clauses (i) through (vii) of this subparagraph, and that all Units must be air-conditioned. The devices must be certified by the Development architect as being included in the design of each tax credit Unit prior to the closing of the construction loan and in actual construction upon Cost Certification.

- (i) Wall insulation at a minimum of R-15. Ceiling insulation at a minimum of R-30. Roof decking to have radiant barriers;
- (ii) Energy Star rated heating and cooling systems, or in dry climates an evaporative cooling system may replace the Energy Star cooling system;
- (iii) All appliances installed, including water heaters, to be Energy Star rated;
- (iv) Maximum 2.5 gallon/minute showerheads and maximum 1.5 gallon/minute faucet aerators;
- (v) If used, natural gas heating systems must have a minimum energy factor of 0.85; and
- (vi) If recessed lighting is used, it must use either compact fluorescent lights or fluorescent tube lights.

(G) A certification that the Development will be built by a General Contractor that satisfies the requirements of the General Appropriation Act, Article VII, Rider 11(c) applicable to the Department which requires that the General Contractor hired by the Development Owner or the Applicant, if the Applicant serves as General Contractor, must demonstrate a history of constructing similar types of housing without the use of federal tax credits.

(H) All of the architectural drawings identified in clauses (i) through (vi) of this subparagraph. If documentation for clause (i) was already submitted as part of a Pre-Application, and no alterations have been made to the document, then the Applicant is not required to submit this documentation in the Application. While full size design or construction documents are not required, the drawings must have an accurate and legible scale and show the dimensions.

(i) a drawing of the entire property that is under the control the prospective ownership entity, which must be a professionally generated (e.g. computer-generated or architectural draft; not a sketch) plat drawn to scale from a metes and bounds description;

(ii) a site plan which:

(I) is consistent with the number of Units and Unit mix specified in the “Rent Schedule” provided in the Application;

(II) identifies all residential, common buildings and proposed amenities; and

(III) clearly delineates the flood plain boundary lines and other easements shown in the site survey;

(iii) floor plans and elevations for each type of residential building;

(iv) floor plans and elevations for each type of common area building;

(v) unit floor plans for each type of Unit. The use of each room must be labeled. The net rentable areas these unit floor plans represent should be consistent with those shown in the “Rent Schedule” provided in the application; and

(vi) elevations of residential and common area buildings which include a percentage estimate of the exterior composition, i.e. 50% brick, 50% siding.

(I) Rehabilitation Developments must submit photographs of the existing signage, typical building elevations and interiors, existing Development amenities, and site work. These photos should clearly document the typical areas and building components which exemplify the need for rehabilitation.

(4) Exhibit 102. Evidence of the Development’s development costs and corresponding credit request and syndication information as described in subparagraphs (A) through (G) of this paragraph.

(A) Exhibit 102A. A written narrative describing the financing plan for the Development, including any non-traditional financing arrangements; the use of funds with respect to the Development; the funding sources for the Development including construction, permanent and bridge loans, and rents, operating subsidies, and replacement reserves; and the commitment status of the funding sources for the Development. This information must be consistent with the information provided throughout the Application.

(B) Exhibit 102B. All Developments must submit the “Development Cost Schedule” provided in the Application Submission Procedures Manual. This exhibit must have been prepared and executed not more than 90 days prior to the close of the Application Acceptance Period.

(C) Exhibit 102C. “Cost of Syndication” Worksheet. A syndicator or financial consultant of the Applicant must provide an estimate of the amount of equity dollars expected to be raised for the Development in conjunction with the amount of housing tax credits requested for allocation to the applicant, including pay-in schedules, syndicator consulting fees and other syndication costs. If syndication costs are included in the eligible basis, a justification of the syndication costs for each cost category by an attorney or accountant specializing in tax matters must also be provided.

(D) Exhibit 102D. For Developments located in a Qualified Census Tract (QCT) as determined by the Secretary of HUD and qualifying for a 30% increase in Eligible Basis, pursuant to the Code, §42(d)(5)(C), Applicants must submit a copy of the census map clearly showing that the proposed Development is located within a QCT. Census tract numbers must be clearly marked on the map, and must be identical to the QCT number stated in the Department’s Reference Manual.

(E) Exhibit 102E. Rehabilitation Developments must also submit the “Proposed Work Write Up for Rehabilitation Developments” provided in the Application Submission Procedures Manual. This form must be prepared and certified by a third party registered architect, professional engineer or general Contractor. Rehabilitation Developments must establish that the rehabilitation will be substantial and will involve at least \$6,000 per unit in direct hard costs.

(F) Exhibit 102F. If offsite costs are included in the budget as a line item, or embedded in the site acquisition contract, or referenced in the utility provider letters, then the supplemental form “Off Site Cost Breakdown” must be provided.

(G) Exhibit 102G. If projected site work costs include unusual or extraordinary items or exceed \$6,500 per unit, then the Applicant must provide a detailed cost breakdown prepared by a third party engineer or architect, and a

letter from a certified public accountant allocating which portions of those site costs should be included in eligible basis and which ones are ineligible.

(5) Exhibit 103. Evidence of readiness to proceed as evidenced by at least one of the items under each of subparagraphs (A) through (E) of this paragraph:

(A) Exhibit 103A. Evidence of site control in the name of the ownership entity, or entities which comprise the Applicant. If the evidence is not in the name of the Development Owner, then the documentation should reflect an expressed ability to transfer the rights to the Development Owner. If this documentation was already submitted as part of a Pre-Application, and no alterations have been made to the documents, then the Applicant is not required to submit this documentation in the Application. One of the following items described in clauses (i) through (iii) of this subparagraph must be provided:

- (i) a recorded warranty deed; or
- (ii) a contract for sale or lease (the minimum term of the lease must be at least 45 years) which is valid through July 31, 2002 or at least 90 days, whichever is greater; or
- (iii) an exclusive option to purchase which is valid for the entire period the Development is under consideration for tax credits or at least 90 days, whichever is greater.

(B) Exhibit 103B. Evidence from the appropriate local municipal authority that satisfies one of clauses (i) through (iii) of this subparagraph. Documentation must have been prepared and executed not more than 90 days prior to the close of the Application Acceptance Period. If this documentation was already submitted as part of a Pre-Application, and no alterations have been made to the documents, then the Applicant is not required to submit this documentation in the Application.

(i) a letter from the chief executive officer of the political subdivision or another local official with appropriate jurisdiction stating that the Development is located within the boundaries of a political subdivision which does not have a zoning ordinance

(ii) a letter from the chief executive officer of the political subdivision or another local official with appropriate jurisdiction stating that:

(I) the Development is permitted under the provisions of the ordinance that apply to the location of the Development; or

(II) the Applicant is in the process of seeking the appropriate zoning and has signed and provided to the political subdivision a release agreeing to hold the political subdivision and all other parties harmless in the event that the appropriate zoning is denied.

(iii) In the case of a rehabilitation Development, if the property is currently a non-conforming use as presently zoned, a letter which discuss the items in subclauses (I) through (IV) of this clause:

- (I) a detailed narrative of the nature of non-conformance;
- (II) the applicable destruction threshold;
- (III) owner's rights to reconstruct in the event of damage; and
- (IV) penalties for noncompliance.

(C) Exhibit 103C. This Exhibit is required for New Construction only. Evidence of the availability of all necessary utilities/services to the development site. Necessary utilities include natural gas (if it will be utilized by the Development), electric, trash, water, and sewer. Such evidence must be a letter or a monthly utility bill from the appropriate municipal/local service provider. If utilities are not already accessible, then the letter must clearly state: an estimated time frame for provision of the utilities, an estimate of the infrastructure cost, and an estimate of any portion of that cost that will be borne by the developer. Letters must be from an authorized individual representing the organization which actually provides the services. Such documentation should clearly indicate the address of the proposed site. If utilities are not already accessible (undeveloped areas), then the letter should not be older than three months from the first day of the Application Acceptance Period.

(D) Exhibit 103D. Evidence of interim and permanent financing sufficient to fund the proposed Total Housing Development Cost less any other funds requested from the Department and any other sources documented in the Application. Such evidence must be consistent with the sources and uses of funds represented in the Application and shall be provided in one or more of the following forms described in clauses (i) through (iv) of this subparagraph:

(i) bona fide financing in place as evidenced by a valid and binding loan agreement and a deed(s) of trust in the name of the ownership entity which identifies the mortgagor as the Applicant or entities which comprise the general partner and/or expressly allows the transfer to the Proposed Development Owner; or,

(ii) bona fide commitment or term sheet issued by a lending institution or mortgage company that is actively and regularly engaged in the business of lending money which is addressed to the ownership entity, or entities which comprise the Applicant and which has been executed and accepted by both parties (the term of the loan must be for a minimum of 15 years with at least a 30 year amortization). The commitment must state an expiration date. Such a

commitment may be conditional upon the completion of due diligence by the lender and upon the award of tax credits; or,

(iii) any Federal, State or locally subsidized gap financing of soft debt must be identified at the time of application. At a minimum, evidence from the lending agency that an application for funding has been made and a term sheet which clearly describes the amount and terms of the funding must be submitted. While evidence of application for funding from another TDHCA program is not required (as these funds will be presented to the Board concurrently with the recommendation for tax credits), the Applicant must clearly indicate that such an application has been filed as required by the Application Submission Procedures Manual. If the necessary financing has not been committed by the applicable lending agency, the Commitment Notice, Housing Credit Allocation or Determination Notice, as the case may be, will be conditioned upon Applicant obtaining a commitment for the required financing by a date certain; or

(iv) if the Development will be financed through Development Owner contributions, provide a letter from an independent CPA verifying the capacity of the Applicant to provide the proposed financing with funds that are not otherwise committed together with a letter from the Applicant's bank or banks confirming that sufficient funds are available to the Applicant. Documentation must have been prepared and executed not more than 90 days prior to the close of the Application Acceptance Period.

(E) Exhibit 103E. A copy of the full legal description and either of the documents described in clauses (i) and (ii) of this subparagraph, and satisfying the requirements of clause (iii), if applicable:

(i) a copy of the current title policy which shows that the ownership (or leasehold) of the land/Development is vested in the exact name of the Applicant, or entities which comprise the Applicant; or

(ii) a copy of a current title commitment with the proposed insured matching exactly the name of the Applicant or entities which comprise the Applicant and the title of the land/Development vested in the name of the exact name of the seller or lessor as indicated on the sales contract or lease.

(iii) if the title policy or title commitment is more than six months old as of the day the Application Acceptance Period closes, than a letter from the title company indicating that nothing further has transpired on the policy or commitment.

(6) Exhibit 104. Evidence of all of the notifications described in subparagraphs (A) through (D) of this paragraph. Such notices must be prepared in accordance with "Exhibit 104, Pre-Application Public Notifications" provided in the Application Submission Procedures Manual.

(A) Exhibit 104A. A copy of the public notice published in a widely circulated newspaper in the area in which the proposed Development will be located. Such notice must run at least twice within a thirty day period. The notice should not run on holidays or weekends. Such notice must be published prior to the submission of the Application to the Department and can not be older than three months from the first day of the Application Acceptance Period. In communities located in close proximity to a larger metropolitan area and whose citizens may subscribe to a local newspaper as well as a widely circulated metropolitan newspaper, the notice should be published in both newspapers.

(B) Exhibit 104B. Evidence of notification of the local chief executive officer(s) (i.e., mayor and county judge), state senator, and state representative of the locality of the Development. Evidence of such notification shall include a letter which at a minimum contains a copy of the public notice sent to the official and proof of delivery in the form of a certified mail receipt, overnight mail receipt, or confirmation letter from said official. Proof of notification should not be older than three months from the first day of the Application Acceptance Period. If this documentation was already submitted as part of a Pre-Application, and no alterations have been made to the documents, then the Applicant is not required to submit this documentation in the Application.

(C) Exhibit 104C. If any of the units in the Development are occupied at the time of application, then the Applicant must post a copy of the public notice in a prominent location at the Development throughout the period of time the Application is under review by the Department. A picture of this posted notice must be provided with this exhibit. When the Department's public hearing schedule for comment on submitted applications becomes available, a copy of the schedule must also be posted until such hearings are completed. Compliance with these requirements shall be confirmed during the Department's site inspection.

(D) Exhibit 104D. Public Housing Waiting List. Evidence that the Development Owner has committed in writing to the local public housing authority (PHA) the availability of Units and that the Development Owner agrees to consider households on the PHA's waiting list as potential tenants and that the Property is available to Section 8 certificate or voucher holders. Evidence of this commitment must include a copy of the Development Owner's letter to the PHA and proof of delivery in the form of a certified mail receipt, overnight mail receipt, or confirmation letter from said PHA. Proof of notification should not be older than three months from the first day of the Application Acceptance Period. If no PHA is within the locality of the Development, the Development Owner must utilize the nearest authority or office responsible for administering Section 8 programs.

(7) Exhibit 105. Evidence of the Development's ownership structure and the Applicant's previous experience as described in subparagraphs (A) through (E) of this paragraph. The 2002 versions of these forms must be submitted.

(A) Exhibit 105A. A chart which clearly illustrates the complete organizational structure of the Development Owner. This chart should provide the names and ownership percentages of Persons with an ownership interest in the Development. The percentage ownership of all Persons in Control of these entities and sub-entities must also be clearly defined.

(B) Exhibit 105B. The Applicant, General Partner (or Managing Member) and all Persons with an ownership interest in the General Partner (or the Managing Member) of these entities and sub-entities must also provide documentation of standing to include the following documentation as applicable under clauses (i) through (iii) of this subclause.

(i) For entities that are not yet formed:

(I) a certificate of reservation of the entity name from the Texas Secretary of State; and

(II) an executed letter of intent to organize, statement of partnership or partnership agreement.

(ii) For existing entities:

(I) if the entity has been formed for three months or longer, a copy of the Certificate of Good Standing from the State Comptroller showing good standing; if the entity has been formed for less than three months, a certificate of reservation of the entity name from the Texas Secretary of State,

(II) a copy of the Articles of Incorporation, Organization or Partnership.

(iii) the Applicant must provide evidence that the signer(s) of the Application have the authority to sign on behalf of the Applicant in the form of a corporate resolution or by-laws which indicate same from the sub-entity in Control of the Applicant, and that those persons constitute all persons required to sign or submit such documents.

(C) Exhibit 105C. A copy of the completed and executed "Exhibit 105C, Previous Participation and Background Certification Form," which is provided in the Application Submission Procedures Manual must be submitted for each Person owning an interest in the general partner (or, if Applicant is to be a limited liability company, the managing member) of the Applicant. If the developer of the Development is receiving more than 10% of the developer fee, he/she will also be required to submit documents for this exhibit.

(D) Exhibit 105D. Evidence that each Person owning an interest in the general partner (or if Applicant is to be a limited liability company, the managing member) of the Applicant has sent "Exhibit 105D, National Previous Participation and Background Certification Form," to the appropriate Housing Credit Agency for each state in which they have developed or operated affordable housing. This form is only necessary when the Developments involved are outside of the state of Texas. An original form is not required. Evidence of such notification shall be a copy of the form sent to the agency and proof of delivery in the form of a certified mail receipt, overnight mail receipt, or confirmation letter from said agency.

(E) Exhibit 105E. Evidence that the Development Owner's general partner, partner (or if Applicant is to be a limited liability company, the managing member) General Contractor or their principals have a record of successfully constructing or developing residential units or comparable commercial property (i.e. dormitory and hotel/motel) in the capacity of owner, general partner, managing member or General Contractor. If the General Contractor's experience is being claimed for this exhibit, then the Development Owner must request the Department's approval prior to replacing the General Contractor. If rehabilitation experience is being claimed to qualify for an Application involving new construction, then the rehabilitation must have been substantial and involved at least \$6,000 of direct hard cost per unit.

(i) The term "successfully" is defined as acting in a capacity as the general contractor or developer of:

(I) at least 150 residential units or comparable commercial property; or

(II) at least 75 residential units or comparable commercial property if the Development applying for credits is a Rural Development.

(ii) Evidence must be one of the following documents:

(I) A certification from the Department that the Person with the experience satisfies this exhibit. Applicants who have previously applied for a Tax Credit Allocation must request this certification at least seven days prior to the beginning of the Application Acceptance Period. Applicants should ensure that the individual whose name is on the certification appears in the organizational chart provided in Exhibit 105A. If the certification is for the General Contractor, then this should be clearly indicated on the document.

(II) If the Department has not previously certified that the experience of the Development Owner, general partner, managing member or General Contractor qualifies for this exhibit, then one of the following documents must be submitted: American Institute of Architects (AIA) Document A111 - Standard Form of Agreement Between Owner & Contractor, AIA Document G704 - Certificate of Substantial Completion, IRS Form 8609, HUD Form 9822, development agreements, partnership agreements, or other appropriate documentation verifying that the general partner, General Contractor or their principals have the required experience. If submitting the IRS Form 8609, only one form per Development is required. The evidence must clearly indicate:

(-a-) that the Development has been completed (i.e. Development Agreements, Partnership Agreements, etc. must be accompanied by certificates of completion.);

(-b-) that the names on the forms and agreements tie back to the ownership entity, general partner, general contractor and their respective principals as listed in the Application; and  
(-c-) the number of units completed or substantially completed.

(8) Exhibit 106. Evidence of the Development's projected income and operating expenses as described in subparagraphs (A) through (D) of this paragraph:

(A) All Developments must provide a 15-year proforma estimate of operating expenses and supporting documentation used to generate projections (excerpts from the market study, operating statements from comparable properties, etc).

(B) If rental assistance, an operating subsidy, an annuity, or an interest rate reduction payment is proposed to exist or continue for the Development, any related contract or other agreement securing those funds must be provided, which at a minimum identifies the source and annual amount of the funds, the number of Units receiving the funds, and the term and expiration date of the contract or other agreement.

(C) Applicant must provide documentation from the source of the "Utility Allowance" estimate used in completing the Rent Schedule provided in the Application. This exhibit must clearly indicate which utility costs are included in the estimate. If there is more than one entity (Section 8 administrator, public housing authority) responsible for setting the utility allowance(s) in the area of the Development location, then the Utility Allowance selected must be the one which most closely reflects the actual utility costs in that Development area. In this case, documentation from the local utility provider supporting the selection must be provided.

(D) Occupied Developments undergoing rehabilitation must also submit the items described in clauses (i) through (iv) of the subparagraph.

(i) If the current property owner is unwilling to provide the required documentation, then a signed statement as to their unwillingness to do so is required.

(I) historical monthly operating statements of the subject Development for 12 consecutive months ending not more than 45 days prior to the first day of the Application Acceptance Period. In lieu of the monthly operating statements, two annual operating statement summaries may be provided. If 12 months of operating statements or two annual operating summaries can not be obtained, then the monthly operating statements since the date of acquisition of the Development and any other supporting documentation used to generate projections may be provided; and

(II) a rent roll not more than 90 days old as of the day the Application Acceptance Period closes, that discloses the terms and rate of the lease, rental rates offered at the date of the rent roll, Unit mix, tenant names or vacancy, and dates of first occupancy and expiration of lease.

(ii) a written explanation of the process used to notify and consult with the tenants in preparing the application;

(iii) a relocation plan outlining relocation requirements and a budget with an identified funding source; and

(iv) if applicable, evidence that the relocation plan has been submitted to the appropriate legal agency.

(9) Exhibit 107. Applications involving Nonprofit General Partners and Qualified Nonprofit Developments.

(A) All Applicants involving a nonprofit general partner (or Managing Member), regardless of the set-aside applied under, must submit all of the documents described in clauses (i) through (iii) of this subparagraph which confirm that the Applicant is a Qualified Nonprofit Organization pursuant to Code, §42(h)(5)(C):

(i) an IRS determination letter which states that the Qualified Nonprofit Organization is a 501(c)(3) or (4) entity;

(ii) a copy of the articles of incorporation of the nonprofit organization which specifically states that the fostering of affordable housing is one of the entity's exempt purposes;

(iii) "Exhibit 107A, Nonprofit Participation Exhibit"; and

(B) Additionally, all Applicants applying under the Nonprofit Set-Aside, as defined by the Code, §42(h)(5), must also provide the following information with respect to each Development Owner and each general partner of a Development Owner, as described in clauses (i) through (vii) of this subparagraph.

(i) evidence that one of the exempt purposes of the nonprofit organization is to provide low income housing;

(ii) evidence that the nonprofit organization prohibits a member of its board of directors, other than a chief staff member serving concurrently as a member of the board, from receiving material compensation for service on the board;

(iii) a third-party legal opinion stating that the nonprofit organization is not affiliated with or controlled by a for-profit organization and the basis for that opinion;

(iv) a copy of the nonprofit organization's most recent audited financial statement;

(v) a list of the names and home addresses of members of the board of directors of the nonprofit organization;

(vi) a third-party legal opinion stating that the nonprofit organization is eligible, as further described, for a housing tax credit allocation from the nonprofit set-aside and the basis for that opinion. Eligibility is contingent upon the non-profit organization controlling a majority of the Development, or if the organization's Application is filed on behalf of a limited partnership, or limited liability company, be the managing partner (or Managing Member); and otherwise meet the requirements of the Code, §42(h)(5); and

(vii) evidence, in the form of a certification, that a majority of the members of the nonprofit organization's board of directors principally reside:

(I) in this state, if the Development is located in a rural area; or

(II) not more than 90 miles from the Development in the community in which the Development is located, if the Development is not located in a rural area.

(10) Exhibit 108. Applicants applying for acquisition credits or affiliated with the seller must provide all of the documentation described in subparagraphs (A) through (C) of this paragraph. Applicants applying for acquisition credits must also provide the items described in subparagraph (D) of this paragraph and as provided in the Application Submission Procedures Manual.

(A) an appraisal, not more than 6 months old as of the day the Application Acceptance Period closes, which complies with the Uniform Standards of Professional Appraisal Practice and the Department's Market Analysis and Appraisal Policy. This appraisal of the Property must separately state the as-is, pre-acquisition or transfer value of the land and the improvements where applicable;

(B) a valuation report from the county tax appraisal district;

(C) clear identification of the selling Persons or entities, and details of any relationship between the seller and the Applicant or any Affiliation with the Development Team, Qualified Market Analyst or any other professional or other consultant performing services with respect to the Development. If any such relationship exists, complete disclosure and documentation of the related party's original acquisition and holding costs since acquisition to justify the proposed sales price must also be provided; and

(D) "Exhibit 108D, Acquisition of Existing Buildings Form."

(11) Exhibit 109. Evidence of the Applicant's, or any person with an ownership interest in the General Partner (or Managing Member), financial status as provided by both documents described in subparagraphs (A) and (B) of this paragraph and as provided in the Application Submission Procedures Manual. If the developer of the Development is receiving a development fee of 10% or more of total development costs, he/she will also be required to submit documents for this exhibit. Such evidence must be filed separately from the volume containing the Threshold Criteria and placed in a large envelope labeled as Exhibit 109, as instructed in the Application Submission Procedures Manual.

(A) Exhibit 109A. A Personal Financial and Credit Statement completed and signed by each Person with a general partner (or if Applicant is to be a Limited Liability Company, managing member) interest in the Applicant. Applicant's statement must not be older than 90 days from the first day of the Application Acceptance Period. If submitting partnership and corporate financials in addition to the individual statements, the certified financial statements should not be older than 12 months. This document is required for an entity even if the entity is wholly-owned by a person who has submitted this document as an individual.

(B) Exhibit 109B. Authorization to Release Credit Information must be completed by all Persons with an ownership interest in the Applicant.

(12) Supplemental Threshold Reports. Documents under subparagraph (A) and (B) must be submitted as further clarified in subparagraph (C) and (D) of this paragraph and §49.9 of this title.

(A) Exhibit 110. A Phase I Environmental Site Assessment (ESA) on the subject Property, dated not more than 12 months prior to the first day of the Application Acceptance Period. In the event that a Phase I Environmental Site Assessment on the Development is older than 12 months as of the day the Application Acceptance Period closes, the Development Owner must supply the Department with an update letter from the Person or organization which prepared the initial assessment; provided however, that the Department will not accept any Phase I Environmental Site Assessment which is more than 24 months old as of the day the Application Acceptance Period closes. The ESA must be prepared in accordance with the policies provided in §49.9 of this title. The ESA must contain a FEMA panel with the site precisely superimposed on the map and a copy of the cover of the FEMA map panel, showing the panel number. If the Development is identified as being in a flood plain, the Applicant must also provide a written explanation of what portion of the Development will be located in the flood plain (i.e., filled, used as parking, used as green space).

(B) Exhibit 111. A comprehensive Market Study prepared at the developer's expense by a disinterested Qualified Market Analyst in accordance with the Market Analysis and Appraisal Policy provided in §49.9 of this title. In the event that a Market Study on the Development is older than 6 months as of the day the Application Acceptance Period closes, the Development Owner must supply the Department with an updated Market Study from the Person or organization which prepared the initial report; provided however, that the Department will not accept any Market Study



which is more than 12 months old as of the day the Application Acceptance Period closes. The Market Study should be prepared for and addressed to the Department.

(i) The Department may determine from time to time that information not requested in the Third Party Market Study Standards will be relevant to the Department's evaluation of the need for the Development and the allocation of the requested Housing Credit Allocation Amount. The Department may request additional information from the Qualified Market Analyst to meet this need.

(ii) All Applicants shall acknowledge by virtue of filing an Application that the Department shall not be bound by any such opinion or the Market Study itself, and may substitute its own analysis and underwriting conclusions for those submitted by the Qualified Market Analyst.

(C) Inserted at the front of each of these reports must be a transmission letter from the person preparing the report that states that the Department is granted full authority to rely on the findings and conclusions of the report.

(D) The requirements for each of the reports identified in subparagraphs (A) and (B) of this paragraph can be satisfied in either of the methods identified in clauses (i) or (ii) of this subparagraph.

(i) Upon Application submission, the documentation for each of these exhibits may be submitted in its entirety as described in subparagraphs (A) and (B) of this paragraph; or

(ii) Upon Application submission, the Applicant may provide evidence in the form of an executed engagement letter with the party performing each of the individual reports that the required exhibit has been commissioned to be performed and that the delivery date will be no later than March 29, 2002. Subsequently, the entire exhibit must be submitted on or before 5:00 p.m. CST, March 29, 2002. If the entire exhibit is not received by that time, the Application will be terminated for a Material Deficiency and will be removed from consideration.

(f) Selection Criteria. All Applications will be ranked according to the Selection Criteria listed in paragraphs (1) through (11) of this subsection. If this documentation was already submitted as part of a Pre-Application, and no alterations have been made to the documents, then the Applicant is not required to submit this documentation in the Application.

(1) Exhibit 201, Development Location Characteristics. Evidence, not more than 90 days old from the date of the Application Acceptance Period, that the subject Property is located within one of the geographical areas described in subparagraphs (A) through (E) of this paragraph. Areas qualifying under any one of the subparagraphs (A) through (E) of this paragraph will receive 5 points. A Development may only receive points under one of the subparagraphs (A) through (E) of this paragraph. A Development may receive points pursuant to subparagraph (F) in addition to any points awarded in subparagraphs (A) through (E).

(A) A geographical area which is:

(i) a Targeted Texas County (TTC) or Economically Distressed Area; or

(ii) a Colonia.

(B) a designated state or federal empowerment/enterprise zone, urban enterprise community, or urban enhanced enterprise community. Such Developments must submit a letter and a map from a city/county official verifying that the proposed Development is located within such a designated zone. Letter should be no older than 90 days from the first day of Application Acceptance Period; or

(C) a city-sponsored Tax Increment Financing Zone (TIF), Public Improvement District (PIDs), or other area or zone where a city or county has, through a local government initiative, specifically encouraged or channeled growth, neighborhood preservation or redevelopment. Significant incentives or benefits must be received from the local government which amount to at least 5% of the Total Development Costs. Such Developments must submit all of the following documentation: a letter from a city/county official verifying that the proposed Development is located within the city sponsored zone or district; a map from the city/county official which clearly delineates the boundaries of the district; and a certified copy of the appropriate resolution or documentation from the mayor, local city council, county judge, or county commissioners court which documents that the designated area was:

(i) created by the local city council/county commission,

(ii) targets a specific geographic area which was not created solely for the benefit of the Applicant, and

(iii) offers tangible and significant area-specific incentives or benefit over and above those normally provided by the city or county.

(D) a Development which is located in a QCT or a "Difficult Development Area" as specifically designated by the Secretary of HUD, and contributes to a concerted community revitalization plan. To qualify for these points, the Development Owner, in addition to submitting Exhibit 102 (B), must also submit a letter from a city/county official which verifies that the Development is located in a Qualified Census Tract as defined by HUD, effective January 1, 2002, or a DDA, and provides a detailed description of the revitalization plan under way in the community, including how the Development contributes to such concerted revitalization efforts.

(E) a non-impacted Census Block pursuant to the Young vs. Martinez judgement. Such Developments must submit evidence in the form of a certification from HUD that the Development is located in such an area.

(F) a Development which is located in a city or county with a relatively low ratio of awarded tax credits (in dollars) to its population. If the Development is located in an incorporated city, the city ratio will be used and if the Development is located outside of an incorporated city, then the county ratio will be used. Such ratios shall be calculated by the Department based on its inventory of tax credit developments and the 2000 Census Data. In the event that census data does not have a figure for a specific place, the Department will rely on the Texas State Data Center's place population estimates, or as a final source the Department will rely on the local municipality's most recent population estimate to calculate the ratio. The ratios will be published in the Reference Manual. Geographic area will be eligible for points as described in clauses (i) through (iv) of this subparagraph.

- (i) A city or county with no LIHTC developments will receive six points.
- (ii) A city or county with a ratio greater than zero and less than one will receive four points.
- (iii) A city or county with a ratio equal to or greater than one, but less than two, will receive two points.
- (iv) A city or county with a ratio greater than four, will have four points deducted from its score.

(2) Housing Needs Characteristics. Each Development, dependent on the city or county where it is located, will yield a score based on the Uniform Housing Needs Scoring Component. If a Development is in an incorporated city, the city score will be used. If a Development is outside the boundaries of an incorporated city, then the county score will be used. The listing of those scores by city and county will be published in the Reference Manual. (20 points maximum).

(3) Exhibit 202. Support and Consistency with Local Planning. All documents must not be older than 90 days from the first day of the Application Acceptance Period.

(A) Evidence from the local municipal authority stating that the Development fulfills a need for additional affordable rental housing as evidenced in a local consolidated plan, comprehensive plan, or other local planning document. If the municipality does not have such a planning document, then a letter from the local municipal authority stating that there is no local plan and that the city supports the Development must be submitted (6 points).

(B) Community Support. Points will be awarded based on the written statements of support from local and state elected officials representing constituents in areas that include the location of the Development. Letters of support must identify the specific Development and must specifically state the officials support of the Development at the proposed location. This documentation must be provided as part of the Application. Letters of support from state officials that do not represent constituents in areas that include the location of the Development will not qualify for points under this Exhibit. Letters of support received after the close of the Application Acceptance Period will not be accepted for this Exhibit. Points can be awarded for letters of support as identified in clauses (i) and (ii) of this subparagraph (maximum 4 points):

- (i) from State of Texas Representative or Senate Member (1 point each, maximum of 2 points); and
- (ii) from the Mayor, County Judge, City Council Member, or County Commissioner indicating support;

or a resolution from the local governing entity indicating support of the Development (2 points)

(C) Points will be awarded based on the written statements of support from neighborhood and/or community civic organizations for areas that encompass the location of the Development. Letters of support must identify the specific Development and must specifically state the organization's support of the Development at the proposed location. This documentation must be provided as part of the Application. Letters of support from organizations that are not active in the area including the location of the Development will not qualify for points under this Exhibit. Letters of support received after the close of the Application Acceptance Period will not be accepted for this Exhibit. (1 point each, maximum of 2 points.)

(4) Development Characteristics. Developments may receive points under as many of the following subparagraphs as are applicable. This minimum requirement does not apply to Developments involving rehabilitation or Developments receiving funding from TxRD-USDA. To qualify for points under subparagraphs (D) through (H) of this paragraph, the Development must first meet the minimum requirements identified under subparagraph (A) of this paragraph.

(A) Unit Size. The square feet of all of the units in the Development, for each type of unit, must be at minimum:

- (i) 500 square feet for an efficiency unit;
- (ii) 750 square feet for a non-elderly one bedroom unit; 650 square feet for an elderly one bedroom unit;
- (iii) 900 square feet for a two bedroom unit;
- (iv) 1,000 square feet for a three bedroom unit; and
- (v) 1,100 square feet for a four bedroom unit.

(B) Exhibit 203. Evidence that the Development to be purchased qualifies as a federally assisted building within the meaning of the Code, §42(d)(6)(B), and is in danger of having the mortgage assigned to HUD, TxRD-USDA, or creating a claim on a federal mortgage insurance fund (such evidence must be a letter from the institution to which the Development is in danger of being assigned); OR evidence that the Applicant is purchasing(ed) a Property owned by

HUD, an insured depository institution in default, or a receiver or conservator of such an institution, or is an REO Property or other existing Property which is being rehabilitated as part of a community revitalization plan. Such evidence must be in the form of a binding contract to purchase from such federal or other entity as described in this subparagraph, closing statements, or recorded warranty deed, not more than 6 months old from the first day of the Application Acceptance Period. For an existing Development which is part of a community revitalization plan, documentation must include a letter from the city/county which verifies that the Development is part of a community revitalization plan and provides a detailed description of the contribution to the revitalization plan (5 points).

(C) Exhibit 204. Evidence that the Development is an At-Risk Development. Applicant shall also provide a statement as to its willingness to maintain low-income use restrictions for the period applicable to the type of HUD assistance involved, and the actions taken or required by it in order to assure that the HUD assistance will continue to be provided to the Development (8 points).

(D) Development provides Units for housing individuals with children. To qualify for these points, these Units must have at least 2 bathrooms and no fewer than three bedrooms and at least 1000 square feet of net rentable area for three bedroom Units or 1200 square feet of net rentable area for four bedroom Units; these Unit size and bathroom requirements are not required for Developments involving rehabilitation to be eligible for the points below. Unless the building is served by an elevator, 3 or 4 bedroom Units located above the building's second floor will not qualify for these points. If the Development is a mixed-income development, only tax credit Units will be used in computing the percentage of qualified Units for this selection item.

(i) 15% of the Units in the Development are three or four bedrooms (5 points); and

(ii) an additional point will be awarded for each additional 5% increment of Units that are three or four bedrooms up to 30% of the Units (a maximum of three points) (3 points).

(E) Cost per Square Foot. For this exhibit hard costs shall be defined as construction costs, including contractor profit, overhead and general requirements. The calculation will be hard costs per square foot of net rentable area (NRA). The calculations will be based on the hard cost listed in Exhibit 102B and NRA shown in the Rent Schedule of the Application. Developments do not exceed \$60 per square foot. (1 point).

(F) Exhibit 205. Unit Amenities and Quality. Developments providing specific amenity and quality features in every Unit at no extra charge to the tenant will be awarded points based on the point structure provided in clauses (i) through (xiv) of this subparagraph, not to exceed 10 points in total. Developments involving rehabilitation will double the points listed for each item, not to exceed 10 points in total.

(i) Lighting Package: Includes heat light and vent fans in all bathrooms and all rooms have ceiling fixtures with accessible wall switches (1 point);

(ii) Kitchen Amenity Package: Includes microwave, disposal, dish washer, range/oven, fan/hood, and refrigerator (1 point);

(iii) Covered entries (1 point);

(iv) Computer line/phone jack available in all bedrooms (only one phone line needed) (1 point);

(v) Mini blinds or window coverings for all windows (1 point);

(vi) laundry connections (1 point);

(vii) storage area (1 point);

(viii) Laundry equipment (washers and dryers) in units (3 point);

(ix) Twenty-five year architectural shingle roofing (1 point);

(x) Covered patios or balconies (1 point);

(xi) Covered parking (2 points);

(xii) Garages (3 points);

(xiii) Greater than 75% masonry (including cementitious board products) on exterior (3 points);

(G) The proposed Development provides housing density of no more than 42 Units per acre for multi-story elderly or urban infill Developments and no more than 24 Units per acre for all other Developments, as follows: (i) 34 Units per acre or less for multi-story elderly or urban infill developments, or 16 Units or less per acre for all other Developments (6 points); or

(ii) 35 to 38 Units per acre for multi-story elderly or urban infill developments, or 17 to 20 Units per acre for all other Developments (4 points); or

(iii) 39 to 42 Units per acres for multi-story elderly or urban infill developments, 21 to 24 Units per acre for all other Developments (2 points).

(H) Exhibit 206. The Development is an existing Residential Development without maximum rent limitations or set-asides for affordable housing. If maximum rent limitations had existed previously, then the restrictions must have expired at least one year prior to the date of Application to the Department (4 points).

(I) The Development is a mixed-income development comprised of both market rate Units and qualified tax credit Units. To qualify for these points, the project must be located in a submarket where the average rents based on the

number of bedrooms for comparable market rate units are at least 10% higher on a per net rentable square foot basis than the maximum allowable rents under the Program. Additionally, excluding 4-bedroom Units, the proposed rents for the market rate units in the project must be at least 5% higher on a per net rentable square foot basis than the maximum allowable rents under the Program. The Market Study required by subsection (e)(12)(B) of this section must provide an analysis of these requirements for each bedroom type shown in proposed unit mix. Points will be awarded to Development's with a Unit based Applicable Fraction which is no greater than:

- (i) 80% (8 points); or,
- (ii) 85% (6 points); or,
- (iii) 90% (4 points); or
- (iv) 95% (2 points).

(J) Exhibit 207. Evidence that the proposed historic Residential Development has received an historic property designation by a federal, state or local Governmental Entity. Such evidence must be in the form of a letter from the designating entity identifying the Development by name and address and stating that the Development is:

(i) listed in the National Register of Historic Places under the United States Department of the Interior in accordance with the National Historic Preservation Act of 1966;

(ii) located in a registered historic district and certified by the United States Department of the Interior as being of historic significance to that district;

(iii) identified in a city, county, or state historic preservation list; or

(iv) designated as a state landmark (6 points).

(K) The Development consists of not more than 36 Units and is not a part of, or contiguous to, a larger Development. (5 points).

(L) Exhibit 208. Evidence that the proposed Development is partially funded by a HOPE VI, Section 202 or Section 811 grant from HUD. The Project must have already received the commitment from HUD. Submission of a HOPE VI, Section 202 or Section 811 grant application to HUD does not qualify a Development for these points. Evidence shall include a copy of the commitment letter from HUD indicating the HOPE VI, Section 202 or Section 811 grant terms and grant award amount (5 points).

(5) Sponsor Characteristics. Developments may only receive points for one of the two criteria listed in subparagraphs (A) and (B) of this paragraph and may also get points associated with subparagraph (C) of this paragraph. To satisfy the requirements of subparagraphs (A) or (B), a copy of an agreement between the two partnering entities must be provided which shows that the nonprofit organization or HUB will hold an ownership interest in and materially participate (within the meaning of the Code §469(h)) in the development and operation of the Development throughout the Compliance Period and clearly identifies the ownership percentages of all parties (3 points maximum for subparagraphs (A) and (B)).

(A) Exhibit 209. Evidence that a HUB, as certified by the Texas Building and Procurement Commission (formerly General Services Commission), has an ownership interest in and materially participates in the development and operation of the Development throughout the Compliance Period. To qualify for these points, the Applicant must submit a certification from the Texas Building and Procurement Commission (formerly General Services Commission) that the Person is a HUB and is valid through July 31, 2002 and renewable after that date.

(B) Exhibit 210. Joint Ventures with Qualified Nonprofit Organizations. Evidence that the Development involves a joint venture between a for profit organization and a Qualified Nonprofit Organization. The Qualified Nonprofit Organization must be materially participating in the Development as one of the General Partners (or Managing Members), but is not required to have Control, to receive these points. However, Developments without Control will not be eligible for the nonprofit set-aside.

(6) Exhibit 211. Development Provides Supportive Services to Tenants. Evidence that the Development Owner has an executed agreement with a for profit organization or a tax-exempt entity for the provision of special supportive services for the tenants. The service provider must be an existing organization qualified by the Internal Revenue Service or other governmental entity. The provision of supportive services will be included in the LURA (up to 7 points, depending upon the services committed in accordance with subparagraph (B) of this paragraph, plus two additional points pursuant to clause (vi) of subparagraph (B) of this paragraph). Acceptable services are described in subparagraphs (C) through (E) of this paragraph.

(A) Both documents described in clauses (i) and (ii) of this subparagraph must be submitted for the service provider to be considered under this exhibit.

(i) A fully executed contract, not more than 6 months old from the first day of the Application Acceptance Period between the service provider and the Applicant that establishes that the services offered provide a benefit that would not be readily available to the tenants if they were not residing in the Development.

(ii) A copy of the service provider's Articles of Incorporation or comparable chartering document.

(B) The supportive services contract will be evaluated using the criteria described in clauses (i) through (vi) of this subparagraph. The contract must clearly state the:

(i) Cost of Services to the Development Owner. The cost shown in the contract must also be included in the Development's operating budget and proforma. The costs must be reasonable for the benefit derived by the tenants. Services for which the Development Owner does not pay, will not receive a point for this item, except in the event that a supportive service provider is able to provide services with funds they receive from other sources. Evidence of the provider's other funding source(s) enabling the provision of service to the tenants of the proposed Development must be provided (1 point).

(ii) Availability of Services - The services must be provided on site or with transportation provided to offsite locations. (1 point).

(iii) Duration of Contract - A commitment to provide the services for not less than five years or an option to renew the contract annually for not less than five years must be provided (1 point).

(iv) Experience of Service Provider - The Department will evaluate the experience of the organization as well as the professional and educational qualifications of the individuals delivering the services (1 point).

(v) Appropriateness - Services must be appropriate and provide a tangible benefit in enhancing the standard of living of a majority of low-income tenants (1 point).

(vi) Coordination with tenant services provided through housing programs – An extra two points will be awarded for services that are provided through state workforce development and welfare programs as evidenced by execution of a Tenant Supportive Services Certification (2 points).

(C) the services must be in one of the following categories: child care, transportation, basic adult education, legal assistance, counseling services, GED preparation, English as a second language classes, vocational training, home buyer education, credit counseling, financial planning assistance or courses, health screening services, health and nutritional courses, youth programs, scholastic tutoring, social events and activities, community gardens or computer facilities; or

(D) any other program described under Title IV-A of the Social Security Act (42 U.S.C. §§ 601 et seq.) which enables children to be cared for in their homes or the homes of relatives; ends the dependence of needy families on government benefits by promoting job preparation, work and marriage; prevents and reduces the incidence of out-of-wedlock pregnancies; and encourages the formation and maintenance of two-parent families, or

(E) any other services approved in writing by the Department.

(7) Tenant Characteristics – Populations with Special Needs Housing & Rent and Income Levels. Developments may receive points under as many of the subparagraphs as apply, in accordance with the terms of those subparagraphs.

(A) This criterion applies to elderly Developments which provide significant facilities and services specifically designed to meet the physical and social needs of the residents. Significant services may include congregate dining facilities, social and recreation programs, continuing education, welfare information and counseling, referral services, transportation and recreation. Other attributes of such Developments include providing hand rails along steps and interior hallways, grab bars in bathrooms, routes that allow for barrier-free travel, lever type doorknobs and single lever faucets. All multistory buildings (two or more floors) must be served by an elevator. Individual Units shall not be multistory. Elderly Developments must not contain any Units with three or more bedrooms. Such a Development must conform to the Federal Fair Housing Act and must be a Development which meets the definition of Qualified Elderly Development (8 points).

(B) Exhibit 212. Evidence that the Development is designed solely for transitional housing for homeless persons on a non-transient basis, with supportive services designed to assist tenants in locating and retaining permanent housing. For the purpose of this exhibit, homeless persons are individuals or families that lack a fixed, regular, and adequate nighttime residence as more fully defined in 24 Code of Federal Regulations, §91.5, and as may be amended from time to time. All of the items described in clauses (i) through (v) of this subparagraph must be submitted:

(i) a detailed narrative describing the type of proposed housing;

(ii) a referral agreement, not more than 12 months old from the first day of the Application Acceptance Period, with an established organization which provides services to the homeless;

(iii) a marketing plan designed to attract qualified tenants and housing providers;

(iv) a list of supportive services; and

(v) adequate additional income source and executed guarantee to supplement any anticipated operating and funding gaps (15 points).

(C) Low Income Targeting Points. Applications are eligible to receive points under clauses (i),(ii) and (iii) of this paragraph. For purposes of calculating percentages of units, all figures should be rounded down to the nearest whole number. To qualify for these points, the rents for the rent-restricted Units must not be higher than the allowable tax credit rents at the rent-restricted AMGI level. For Section 8 residents, or other rental assistance tenants, the tenant paid rent plus the utility allowance is compared to the rent limit to determine compliance. The Development Owner, upon

making selections for this exhibit will set aside Units at the rent-restricted levels of AMGI and will maintain the percentage of such Units continuously over the compliance and extended use period as specified in the LURA. For the purposes of this subparagraph (maintaining the promised percentage of Units at the selected levels of AMGI), if at recertification the tenant's household income exceeds the specified limit, then the Unit remains as a Unit restricted at the specified level of AMGI until the next available Unit of comparable or smaller size is designated to replace this Unit. Once the Unit exceeding the specified AMGI level is replaced, then the rent for the previously qualified Unit at the specified level of AMGI may be increased over the LIHTC requirements. Rent increases, if any, should comply with lease provisions and local tenant-landlord laws.

(i) Development owners selecting to set aside units for individuals and families earning less than 50% of AMGI shall receive the corresponding points listed below:

- (I) 0% to 9% of tax credit Units set aside for 50% or less of AMGI (4 points)
- (II) 10% to 19% of tax credit Units set aside for 50% or less of AMGI (8 points)
- (III) 20% to 29% of tax credit Units set aside for 50% or less AMGI (12 points)
- (IV) 30% to 39% of tax credit Units set aside for 50% or less AMGI (16 points)
- (V) 40% or more of tax credit Units set aside for 50% or less AMGI (20 points)

(ii) Development owners selecting to set aside units for individuals and families earning less than 40% of AMGI shall receive the corresponding points listed below:

- (I) 0% to 9% of tax credit Units set aside for 40% or less of AMGI (6 points)
- (II) 10% to 19% of tax credit Units set aside for 40% or less of AMGI (10 points)
- (III) 20% to 29% of tax credit Units set aside for 40% or less AMGI (14 points)
- (IV) 30% to 39% of tax credit Units set aside for 40% or less AMGI (18 points)
- (V) 40% or more of tax credit Units set aside for 40% or less AMGI (22 points)

(iii) Development owners selecting to set aside units for individuals and families earning less than 30% of AMGI shall receive the corresponding points listed below:

- (I) 0% to 9% of tax credit Units set aside for 30% or less of AMGI (8 points)
- (II) 10% to 19% of tax credit Units set aside for 30% or less of AMGI (12 points)
- (III) 20% to 29% of tax credit Units set aside for 30% or less AMGI (16 points)
- (IV) 30% to 39% of tax credit Units set aside for 30% or less AMGI (20 points)

(V) 40% or more of tax credit Units set aside for 30% or less AMGI (24 points). (8) Exhibit 213. Length of Compliance Period. The initial compliance period for a development is fifteen years. In accordance with Code, developments are required to adhere to an extended low income use period for an additional 15 years. To receive points the Development Owner elects, in the Application, to extend the compliance period beyond the extended low income use period. The period commences with the first year of the Credit Period.

(A) Extend the compliance period for an additional 10 years, with an Extended Use Period of 40 years (8 points);

(B) Extend the compliance period for an additional 15 years, with an Extended Use Period of 45 years (10 points);

(C) Extend the compliance period for an additional 20 years, with an Extended Use Period of 50 years (12 points); or

(D) Extend the compliance period for an additional 25 years, with an Extended Use Period of 55 years (14 points);

(9) Exhibit 214. Evidence that Development Owner agrees to provide a right of first refusal to purchase the Development upon or following the end of the Compliance Period for the minimum purchase price provided in, and in accordance with the requirements of, §42(i)(7) of the Code (the "Minimum Purchase Price"), to a Qualified Nonprofit Organization, the Department; and either an individual tenant with respect to a single family building; or a tenant cooperative, a resident management corporation in the Development or other association of tenants in the Development with respect to multifamily developments (together, in all such cases, including the tenants of a single family building, a "Tenant Organization"). Development Owner may qualify for these points by providing the right of first refusal in the following terms (5 points).

(A) Upon the earlier to occur of:

(i) the Development Owner's determination to sell the Development, or

(ii) the Development Owner's request to the Department, pursuant to §42(h)(6)(I) of the Code, to find a buyer who will purchase the Development pursuant to a "qualified contract" within the meaning of §42(h)(6)(F) of the Code, the Development Owner shall provide a notice of intent to sell the Development ("Notice of Intent") to the Department and to such other parties as the Department may direct at that time. If the Development Owner determines that it will sell the Development at the end of the Compliance Period, the Notice of Intent shall be given no later than two years prior to expiration of the Compliance Period. If the Development Owner determines that it will sell the

Development at some point later than the end of the Compliance Period, the Notice of Intent shall be given no later than two years prior to date upon which the Development Owner intends to sell the Development.

(B) During the two years following the giving of Notice of Intent, the Sponsor may enter into an agreement to sell the Development only in accordance with a right of first refusal for sale at the Minimum Purchase Price with parties in the following order of priority:

(i) during the first six-month period after the Notice of Intent, only with a Qualified Nonprofit Organization that is also a community housing development organization, as defined for purposes of the federal HOME Investment Partnerships Program at 24 C.F.R. § 92.1 (a "CHDO") and is approved by the Department,

(ii) during the second six-month period after the Notice of Intent, only with a Qualified Nonprofit Organization or a Tenant Organization; and

(iii) during the second year after the Notice of Intent, only with the Department or with a Qualified Nonprofit Organization approved by the Department or a Tenant Organization approved by the Department.

(iv) If, during such two-year period, the Development Owner shall receive an offer to purchase the Development at the Minimum Purchase Price from one of the organizations designated in clauses (i), (ii), and (iii) of this subparagraph (within the period(s) appropriate to such organization), the Development Owner shall sell the Development at the Minimum Purchase Price to such organization. If, during such period, the Development Owner shall receive more than one offer to purchase the Development at the Minimum Purchase Price from one or more of the organizations designated in clauses (i), (ii), and (iii) of this subparagraph (within the period(s) appropriate to such organizations), the Development Owner shall sell the Development at the Minimum Purchase Price to whichever of such organizations it shall choose.

(C) After the later to occur of:

(i) the end of the Compliance Period; or

(ii) two years from delivery of a Notice of Intent,

the Development Owner may sell the Development without regard to any right of first refusal established by the LURA if no offer to purchase the Development at or above the Minimum Purchase Price has been made by a Qualified Nonprofit Organization, a Tenant Organization or the Department, or a period of 120 days has expired from the date of acceptance of all such offers as shall have been received without the sale having occurred, provided that the failure(s) to close within any such 120-day period shall not have been caused by the Development Owner or matters related to the title for the Development.

(D) At any time prior to the giving of the Notice of Intent, the Development Owner may enter into an agreement with one or more specific Qualified Nonprofit Organizations and/or Tenant Organizations to provide a right of first refusal to purchase the Development for the Minimum Purchase Price, but any such agreement shall only permit purchase of the Development by such organization in accordance with and subject to the priorities set forth in subparagraph (B) of this paragraph.

(E) The Department shall, at the request of the Development Owner, identify in the LURA a Qualified Nonprofit Organization or Tenant Organization which shall hold a limited priority in exercising a right of first refusal to purchase the Development at the Minimum Purchase Price, in accordance with and subject to the priorities set forth in subparagraph (B) of this paragraph.

(F) The Department shall have the right to enforce the Development Owner's obligation to sell the Development as herein contemplated by obtaining a power-of-attorney from the Development Owner to execute such a sale or by obtaining an order for specific performance of such obligation or by such other means or remedy as shall be, in the Department's discretion, appropriate.

(10) Pre-Application Points. Developments which submit a Pre-Application during the Pre-Application Acceptance Period and meet the requirements of this paragraph shall receive 15 points. To be eligible for these points, the proposed development in the Pre-Application must:

(A) be for the identical site and unit mix as the proposed development in the Application;

(B) have met the Pre-Application Threshold Criteria;

(C) be serving the same target population in the Application in the same set-aside; and

(D) not have altered the documentation for the Pre-Application Selection Criteria.

(11) Point Reductions. Penalties will be imposed on Applicants or Affiliates who have requested extensions of Department deadlines relating to developments receiving a housing tax credit allocation made in the application round preceding the current round. Extensions that will receive penalties include all types of extensions identified in Section 49.13 of this title, including Projects whose extensions were authorized by the Board. The schedule of penalties to Applicants or Affiliates requesting extensions is as follows:

(A) First extension request - \$2,500 extension penalty fee plus 2 point deduction;

(B) Second extension request - \$25//Unit plus 2 point deduction; and

(C) Third extension request - \$35/Unit plus 2 point deduction.(g) Credit Amount. The Department shall issue tax credits only in the amount needed for the financial feasibility and viability of a Development throughout the Compliance Period. The issuance of tax credits or the determination of any allocation amount in no way represents or purports to warrant the feasibility or viability of the Development by the Department. The Department will limit the allocation of tax credits to no more than \$1.2 million per Development. The allocation of tax credits shall also be limited to not more than \$1.6 million per Applicant per year. The Department will limit the allocation of tax credits to not more than \$6,500 per Unit. These limitations will apply to any Applicant or Related Party unless otherwise provided for by the Board. Tax Exempt Bond Development Applications are not subject to the per Development and per Applicant or Related Party credit limitations, and Tax Exempt Bond Developments will not count towards the total limit on tax credits per Applicant. The limitation does not apply:

(1) to an entity which raises or provides equity for one or more Developments, solely with respect to its actions in raising or providing equity for such Developments (including syndication related activities as agent on behalf of investors);

(2) to the provision by an entity of "qualified commercial financing" within the meaning of the Code, §49(a)(1)(D)(ii) (without regard to the 80% limitation thereof);

(3) to a Qualified Nonprofit Organization or other not-for-profit entity, to the extent that the participation in a Development by such organization consists only of the provision of loan funds or grants; and

(4) to a Development Consultant with respect to the provision of consulting services.

(h) Limitations on the Size of Developments.

(1) The minimum Development size will be limited to 16 units unless otherwise provided for under the Ineligible Building Types definition.

(2) Rural Developments involving new construction will be limited to 76 Units unless the Market Study clearly documents that larger developments are consistent with the comparables in the community and that there is a significant demand for additional units. Rural Developments exceeding 76 Units based on the Market Study will be ineligible for the Rural Set-Aside. All other Developments involving new construction will be limited to 250 units. These maximum unit limitations also apply to those Developments which involve a combination of rehabilitation and new construction. Developments that consist solely of acquisition/rehabilitation or rehabilitation only may exceed the maximum unit restrictions. For those developments which are a second phase or are otherwise adjacent to an existing tax credit development unless such proposed development is being constructed to replace previously existing affordable multifamily units on its site, the combined Unit total for the developments may not exceed the maximum allowable Development size, unless the first phase has been completed and stabilized for at least six months.

(3) Tax Exempt Bond Developments will be limited to 280 Units.

(i) Tax Exempt Bond Financed Developments.

(1) Tax Exempt Bond Development Applications are also subject to evaluation under the QAP and Rules and the requirements and underwriting review criteria described in the Application Submission Procedures Manual. Such Developments requesting a Determination Notice in the current calendar year must meet all Threshold Criteria requirements stipulated in subsection (e) of this section. Such Developments which received a Determination Notice in a prior calendar year must meet all Threshold Criteria requirements stipulated in the QAP and Rules in effect for the calendar year in which the Determination Notice was issued; provided, however, that such Developments shall comply with all procedural requirements for obtaining Department action in the current QAP and Rules; and such other requirements of the QAP and Rules as the Department determines applicable. Tax Exempt Bond Financed Developments are not subject to the Selection Criteria set forth in subsection (f) of this section and are not required to submit documentation relating thereto.

(2) Tax Exempt Bond Development Applications will be evaluated under the factors set forth at paragraphs (2) and (4) of subsection (c) of this section. With respect to paragraph (3) of subsection (b) of this section, Developments determined to be infeasible by the Department will not receive a Determination Notice. With respect to paragraph (3) of section 49.9(b) of this title, Developments determined by the Department to result in an excessive concentration of affordable housing developments within a particular market area will not receive a Determination Notice. With respect to paragraph (2) of subsection (c) of this section, Developments determined by the Department to be located on an "Unacceptable" site will not receive a Determination Notice. For purposes of paragraph (4) of subsection (c) of this section, Developments must demonstrate the Development's consistency with the bond issuer's consolidated plan or other similar planning document. Consistency with the local municipality's consolidated plan or similar planning document must also be demonstrated in those instances where the city or county has a consolidated plan.

(3) Tax Exempt Bond Developments may not include Ineligible Building Types unless the Department determines that it is in the best interests of the particular Development, its market area and the tax credit program to permit a particular building type to be included in the Development.



(4) Tax Exempt Bond Developments are subject to the requirements and restrictions set forth in §49.5 of this title.

(5) Tax Exempt Bond Development Applications are not subject to the limitations on amount of tax credits per Applicant or per Development set forth in subsection (g) of this section.

(6) Tax Exempt Bond Development Applications must provide an executed agreement with a qualified service provider for the provision of special supportive services that would otherwise not be available for the tenants. The provision of these services will be included in the LURA. Acceptable services as described in subparagraphs (A) through (C) of this paragraph include:

(A) the services must be in one of the following categories: child care, transportation, basic adult education, legal assistance, counseling services, GED preparation, English as a second language classes, vocational training, home buyer education, credit counseling, financial planning assistance or courses, health screening services, health and nutritional courses, youth programs, scholastic tutoring, social events and activities, community gardens or computer facilities; or

(B) any other program described under Title IV-A of the Social Security Act (42 U.S.C. §§ 601 et seq.) which enables children to be cared for in their homes or the homes of relatives; ends the dependence of needy families on government benefits by promoting job preparation, work and marriage; prevents and reduces the incidence of out-of-wedlock pregnancies; and encourages the formation and maintenance of two-parent families, or

(C) any other services approved in writing by the Issuer. The plan for tenant supportive services submitted for review and approval of the Issuer must contain a plan for coordination of services with state workforce development and welfare programs. The coordinated effort will vary depending upon the needs of the tenant profile at any given time as outlined in the plan.

(7) Code §42(m)(2)(D) required the bond issuer (if other than the Department) to make sure that a Tax Exempt Bond Development does not receive more tax credits than the amount needed for the financial feasibility and viability of a Development throughout the Compliance Period. Treasury Regulations prescribe the occasions upon which this determination must be made. In light of the requirement, issuers may either elect to underwrite the Development for this purpose in accordance with the QAP and the Department's underwriting guidelines; or delegate, by agreement, that function to the Department. If the issuer underwrites the Development, the Department will, nonetheless, review the underwriting report and may make such changes in the amount of credits which the Development may be allowed as are appropriate under the Department's guidelines. The Determination Notice issued by the Department and any subsequent IRS Form(s) 8609 will reflect the amount of tax credits for which the Development is determined to be eligible in accordance with this paragraph, and the amount of tax credits reflected in the IRS Form 8609 may be greater or less than the amount set forth in the Determination Notice, based upon the Department's and the bond issuer's determination as of each building's placement in service

(8) If the Department staff determines that all requirements of subsection (i) of this section have been met, the Board, shall authorize the Department to issue a Determination Notice to the Applicant that the Development satisfies the requirements of the QAP and Rules in accordance with the Code, §42(m)(1)(D).

(j) Adherence to Obligations. All representations, undertakings and commitments made by an Applicant in the applications process for a Development, whether with respect to Threshold Criteria, Selection Criteria or otherwise, shall be deemed to be a condition to any Commitment Notice, Determination Notice, or Carryover Allocation for such Development, the violation of which shall be cause for cancellation of such Commitment Notice, Determination Notice, or Carryover Allocation by the Department, and if concerning the ongoing features or operation of the Development, shall be reflected in the LURA. All such representations are enforceable by the Department and the tenants of the Development, including enforcement by administrative penalties for failure to perform as stated in the representation and enforcement by inclusion in deed restrictions to which the Department is a party.

(k) Amendment of Application Subsequent to Allocation by Board.

(1) If a proposed modification would materially alter a Development approved for an allocation of a housing tax credit, the Department shall require the Applicant to file a formal, written amendment to the Application on a form prescribed by the Department.

(2) The Executive Director of the Department shall require the Department staff assigned to underwrite Applications to evaluate the amendment and provide an analysis and written recommendation to the Board. The appropriate party monitoring compliance during construction in accordance with §49.10 of this title shall also provide to the Board an analysis and written recommendation regarding the amendment.

(3) The Board must vote on whether to approve the amendment. The Board by vote may reject an amendment and, if appropriate, rescind a Commitment Notice or terminate the allocation of housing tax credits and reallocate the credits to other Applicants on the Waiting List if the Board determines that the modification proposed in the amendment:

(A) would materially alter the Development in a negative manner; or

(B) would have adversely affected the selection of the Application in the Application Round.

- (4) Material alteration of a Development includes, but is not limited to:
  - (A) a significant modification of the site plan;
  - (B) a modification of the number of units or bedroom mix of units;
  - (C) a substantive modification of the scope of tenant services;
  - (D) a reduction of three percent or more in the square footage of the units or common areas;
  - (E) a significant modification of the architectural design of the Development;
  - (F) a modification of the residential density of the Development of at least five percent; and
  - (G) any other modification considered significant by the Board.
- (5) In evaluating the amendment under this subsection, the Department staff shall consider whether the need for the modification proposed in the amendment was:
  - (A) reasonably foreseeable by the Applicant at the time the Application was submitted; or
  - (B) preventable by the Applicant.
- (6) This section shall be administered in a manner that is consistent with the Code, §42.
- (7) Before the 15<sup>th</sup> day preceding the date of Board action on the amendment, notice of an amendment and the recommendation of the Executive Director and monitor regarding the amendment will be posted to the Department's web site.

(l) Housing Tax Credit and Ownership Transfers. An Applicant may not transfer an allocation of housing tax credits or ownership of a Development supported with an allocation of housing tax credits to any person other than an Affiliate unless the Applicant obtains the Executive Director's prior, written approval of the transfer. The Executive Director may not unreasonably withhold approval of the transfer. An Applicant seeking Executive Director approval of a transfer and the proposed transferee must provide to the Department a copy of any applicable agreement between the parties to the transfer, including any third-party agreement with the Department. On request, an Applicant seeking Executive Director approval of a transfer must provide to the Department a list of the names of transferees and Related Parties; and detailed information describing the experience and financial capacity of transferees and related parties. The Development Owner shall certify to the Executive Director that the tenants in the Development have been notified in writing of the transfer before the 30th day preceding the date of submission of the transfer request to the Department. Not later than the fifth working day after the date the Department receives all necessary information under this section, the Department shall conduct a qualifications review of a transferee to determine the transferee's past compliance with all aspects of the low income housing tax credit program, LURAs; and the sufficiency of the transferee's experience with Developments supported with housing tax credit allocations.

**§49.8. Underwriting Guidelines.**

(a) The Department will award, as computed during the underwriting review, the lesser amount calculated by the eligible basis method, equity gap method, or the amount requested by the Applicant as further described in paragraphs (1) through (3) of this subsection.

(1) Eligible Basis Method. Based upon calculation of eligible basis after applying all cost containment measures and limits on profit, overhead, general requirements and developer fees. The Applicable Percentage will be used in the Eligible Basis Method as defined in Section 49.2(6) of this title.

(2) Equity Gap Method. The amount of credits needed to fill the gap created by total Development cost less total debt. In making this determination, the Department will consider the percentage of the total Development that will be financed by proceeds of the tax credits and reserve the right to adjust the permanent loan amount as necessary.

(3) The amount requested by the Applicant will be used if it is lower than the Department's determination of eligible basis except as related to adjustments made to the applicable percentage.

(b) Construction Standards. The cost basis is defined using Average quality as defined by Marshall & Swift Residential Cost Handbook. If the Development contains amenities not included in the Average quality standard, the Department will take into account the costs of the amenities as designed in the Development. If the Development will contain single family buildings as permitted under the "Ineligible Building Type" definition in §49.2(49) of this title, then the cost basis should be consistent with single family Average quality as defined by Marshall & Swift Residential Cost Handbook.

(c) Development Costs. The Department's estimate of the Development's cost will be based on the use of Marshall and Swift cost evaluation data. Total Housing Development Costs include all costs associated with the construction of the Development including common space, and as defined under §49.2(84) of this title. The Applicant's cost estimate will be compared against the Department's and the Total Housing Development Cost and corresponding credit allocation will be adjusted accordingly. Exceptions may be made at the Department's discretion but only if they are well documented by the Applicant at the time of Application submission. The underwriting staff will evaluate rehabilitation Developments for comprehensiveness of the third party work write-up and will determine if additional information is needed. The Applicant must provide their best estimate of how much it would cost to develop the Development. Adjustments will be made with respect to assisted living, congregate care, or elderly projects which may require larger common areas. The Department is

also aware that differences in land costs may account for significant cost variations among Developments. Hard construction costs include contractor profit, overhead and general requirements.

(d) For Acquisition Developments. The proposed acquisition price verified in the site control document will be compared to the unsubsidized as-is market value conclusion of the Appraiser whose appraisal is consistent with the Department's Market analysis and Appraisal Policy and USPAP Guidelines. For Developments where an identity of interest exists between the buyer and seller the original acquisition cost of the Development to the seller along with holding costs and capitalized improvements will also be considered. Holding costs may include a rate of return consistent with the historical return of similar risk on any equity position in the Development. The Department will also consider exit taxes that may be required as a result of the transfer of ownership if they are detailed and well documented and certified to by the owners CPA. The ultimate credit amount may be reduced to meet the rehabilitation need after all available reserves have been expended.

(e) Site Work. If Project site work costs exceed \$6,500 per Unit, the Applicant must submit a detailed cost breakdown prepared by a third party engineer or architect, and a letter from a certified public accountant properly allocating which portions of those site costs should be included in eligible basis and which ones are ineligible, in keeping with the holding of the Internal Revenue Service Technical Advice Memoranda.

(f) Operating Reserves. The Department will utilize the terms proposed by the syndicator or lender or 4 to 6 months of operating expenses plus debt service. These reserves must be included in Exhibit 102B, Project Cost Schedule, of the application.

(g) Fee Limits. The development cost associated with general requirements cannot exceed 6% of the eligible basis associated with onsite sitework and construction hard costs. The development cost associated with contractor overhead cannot exceed 2% of the eligible basis associated with onsite sitework and construction hard costs. For Developments also receiving financing from TxRD-USDA, the combination of builder's general requirements, builder's overhead, and builder's profit should not exceed the lower of TDHCA or TxRD-USDA requirements. The development cost associated with contractor profit cannot exceed 6% of the eligible basis associated with onsite sitework and construction hard costs. The development cost associated with developer's Fees cannot exceed 15% of the project's Total Eligible Basis (adjusted for the reduction of federal grants, below market rate loans, historic credits, etc.), as defined in §49.2(34), not inclusive of the developer fees themselves. The 15% can be divided between overhead and fee as desired but the sum of both items must not exceed 15%. The Developer Fee may be earned on non-eligible basis activities, but only 15% of eligible basis items may be included in basis for the purpose of calculating a project's credit amount.

(h) Income and Expenses. Financial feasibility will be tested by adding rental income to miscellaneous income, and subtracting vacancy and expenses to achieve a net operating income. The net operating income will be divided by the yearly debt service to achieve the debt coverage ratio. These figures will be calculated using the methods identified in paragraphs (1) through (5) of this subsection.

(1) Rental Income. LIHTC rent restricted rates less utility allowances and market rent rates (if the project is not 100% LIHTC) will be utilized in calculating the rental income. If the market rate rents are lower than the net LIHTC program rents, then the market rents will be utilized. The Department will always use the HUD Rental and Income Limits that are most current.

(2) Miscellaneous Income. A range of \$5 to \$15 per unit which will encompass any and all income from application fees, late fees, laundry, storage, garage rentals, or any other ancillary income. Exceptions may be made for special uses, such as congregate care, elderly and child care facilities or where comparables within the submarket are realizing higher miscellaneous income. The exemptions will be evaluated on a case by case basis. Applicants must submit documentation that explains their projected miscellaneous income.

(3) Vacancy: Typically the greater of the market vacancy rate or 7.5% (5% vacancy plus 2.5% for collection loss) will be utilized by the Department to underwrite the development.

(4) Expenses: Applicants should provide an estimate of their expected expenses based on their own research (internal historical operating data, IREM, etc.) For new developments, the expenses must include at least \$200 per unit in reserve for replacement. For rehabilitation developments, the expenses must include at least \$300 per unit in reserve for replacement. CHDOs must identify if they will be obtaining a property tax exemption or not. If they indicate that they will have an exemption, they must provide reasonable proof that the exemption can be attained. If no reasonable proof is provided, the Development will be underwritten under the assumption that property taxes must be paid. The Applicant's expenses will be compared against the most current information contained in the Department's database and expenses submitted by other comparable projects. The underwriter will analyze the development based on the current TDHCA operating database, the project's existing historical performance, if any, the application proforma, the market study and any additional documentation provided for consideration. A line by line review by expense category will on a project-by-project basis determine the appropriate anticipated operating expense for each project.

(5) Debt Coverage Ratio (DCR). The DCR will be sized at a minimum of 1.10 by the first year of stabilized rents and be restricted to not more than 1.25. The projects DCR should remain above 1.10 over the life of the project estimated

in the proforma using a 3% income growth factor and a 4% expense growth factor. Projects in rural areas and projects which fulfill special needs may be allowed a DCR below this level but must maintain a positive net cash flow once stabilized occupancy levels have been reached. A recommendation for increasing or decreasing the development's serviceable debt may be made by the Department should the DCR exceed or fall below the above stated range.

**§49.9. Market Study Requirements; Concentration; and Environmental Site Assessment Guidelines.**

(a) Market Study Requirements.

(1) Market Analyst Qualifications. The qualifications of each Report Provider are determined and approved on a case-by-case basis by the chief underwriter or the review appraiser, based upon the quality of the report, itself and the experience and educational background of the report provider as a market analyst, as set forth in a Statement of Qualifications appended to the Report. The Department will maintain a list of approved Market Analysts. Such determination will be at the discretion of the Department. Generally, a qualified Market Analyst will be:

(A) a real estate appraiser certified or licensed by the Texas Appraiser Licensing and Certification Board; or,  
(B) a real estate consultant or other professional currently active in the subject property's market area who demonstrates competency, expertise, and the ability to render a high quality, written report.

(2) A market study prepared for the Department must evaluate the need for decent, safe, and sanitary housing at rental rates or sales prices that eligible tenants can afford. The study must determine the feasibility of the subject property and state conclusions as to the impact of the property with respect to the determined housing needs. The market study should be self-contained and must describe in sufficient detail and with adequate data, such conclusions. Any third party reports relied upon in the market study must be verified directly by the market analyst as to the validity of the data and the conclusions.

(3) The market study must contain sufficient data and analysis to allow the reader to understand the market data presented, the analysis of the data, and the conclusion(s) of such analysis and its relationship to the subject property. The complexity of this requirement will vary in direct proportion with the complexity of the real estate and the real estate market being analyzed. The study should lead the reader to the same or similar conclusion(s) reached by the market analyst.

(4) The primary market or submarket will be defined on a case-by-case basis by the market analyst engaged by the Applicant to provide a market study for the Development. The market study should contain a map defining the market and submarket and a narrative of the salient features that helped the analyst make such a determination. As a general guide for the market analyst, the Department encourages the use of natural political/geographical boundaries whenever possible. Furthermore, the primary or submarket for a project chosen by the market analyst will generally be most informative if it contains between 50,000 and 250,000 persons, though a sub-market with fewer or more residents may be indicated at the discretion of the market analyst where political/geographic boundaries indicate doing so.

(5) An acceptable market study must also include at the minimum in quantitative as well as narrative form the information required under subparagraphs (A) through (C) of this paragraph. The Department reserves the right to require the Report Provider to address such other issues as may be relevant to the Department's evaluation of the need for the subject property and the provisions of the particular program guidelines. All Applicants shall acknowledge by virtue of filing an Application that the Department shall not be bound by any such opinion or market study, and may substitute its own analysis and underwriting conclusions for those submitted by the report provider.

(A) a comprehensive evaluation of the existing supply of comparable multifamily or single family subdivision property(ies) as appropriate in the same market and submarket area as the Development. The study should include census data documenting the amount and condition of local housing stock as well as information on building permits since the census data was collected. The study should evaluate existing market rate housing as well as existing subsidized housing to include local housing authority units and any and all other rent or income restricted units with respect to:

(i) rental rates including an attribute adjustment matrix for the most comparable Units to the Units proposed in the Development;

(ii) affordability analysis of the comparable unrestricted units;

(iii) current physical condition of the comparable property based upon a cursory exterior inspection evidenced by photographs;

(iv) occupancy rates of each of the comparable properties and occupancy trends by property class;

(v) annual turnover rates of each of the comparable properties and turnover trends by property class;

(vi) historic, current and anticipated absorption rates taking into account all other new or proposed development and the availability of other comparable sites;

(vii) an analysis of the number of existing or proposed units being set-aside or constructed for persons with disabilities; and

(viii) an itemization of all LIHTC Program Units within the defined submarket.

(B) a comprehensive evaluation of the demand for the housing the subject is proposed to provide. The study must include an analysis of the need for market and affordable housing within the Development's market and submarket area using the most current census and demographic data available, with copies of such source data included in the report or in the report addenda. The demand for housing should be quantified, well reasoned and should be segmented to include only relevant income and age eligible targets of the subject. Each segment should be addressed independently and overlapping segments should be minimized and clearly identified when required. The final quantified demand calculation may include demand due to:

- (i) documented population and household growth trends for targeted income-eligible rental households;
- (ii) documented turnover of existing income-eligible targeted rental households;
- (iii) confirmed new employment growth for targeted income-eligible rental households; and
- (iv) other well reasoned and documented sources of demand determined by the market analyst.

(C) a comprehensive evaluation of the Development in terms of:

(i) correlation of market and submarket demographics of housing demand to the current and proposed supply of housing and the need for the Development;

(ii) rental rate conclusion for each unit type and rental restriction category. Conclusions of rental rates below the maximum net rent limit rents must be well reasoned, documented and consistent with the market data and should address any inconsistencies with the conclusions of the demand for the units. Alternative market acceptable rent for each rent restricted unit should also be included to evaluate the potential to achieve increases in the restricted rents as allowable increases occur;

(iii) absorption projections for the subject until a sustaining occupancy level has been achieved (if absorption projections for the subject differ significantly from historic data, an explanation of such should be included);

(iv) appropriateness of unit mix and unit sizes especially in regard to the income eligible targeted demand and existing or proposed supply for any proposed three and four bedroom units;

(v) appropriateness of interior and exterior physical amenities including appliance package;

(vi) location of the subject in relationship to employment centers, retail businesses, public transportation, schools, etc.; and

(ix) the capture rate for the Development defined as the sum of the proposed units for a given project plus any previously approved but not yet stabilized new units in the sub-market divided by the total income-eligible targeted renter demand identified by the market analysis for a specific Development's primary market or submarket. The Department defines comparable units as units that are dedicated to the same household type as the proposed subject property using the classifications of family, elderly or transitional as housing types. The Department defines a stabilized project as one that has maintained a 90% occupancy level for at least 12 consecutive months. The Department will independently verify the number of affordable multifamily units included in the market study and will ensure that all projects previously allocated funds through the Department are included in the final analysis.

(b) Concentration. The Department intends to limit the approval of funds to new multifamily housing projects requesting funds where the anticipated capture rate is in excess of 25% for the primary or sub-market unless the market is a rural market. In rural markets, the Department intends to limit the approval of funds to new multifamily housing projects requesting funds from the Department where the anticipated capture rate is in excess of 100% of the qualified demand. Affordable housing which replaces previously existing substandard affordable housing within the same sub-market on a Unit for Unit basis, and which gives the displaced tenants of the previously existing affordable housing a leasing preference, is excepted from these concentration restrictions. The documentation needed to support decisions relating to concentration are identified in subsection (a) of this section.

(c) Environmental Site Assessment Guidelines. The environmental assessment required under Section 50.7(e) of this title should be conducted and reported in conformity with the standards of the American Society for Testing and Materials (ASTM) and such other recognized industry standards as a reasonable person would deem relevant in view of the Property's anticipated use for human habitation. The environmental assessment shall be conducted by an environmental or professional engineer and be prepared at the expense of the Development Owner.

(1) The report must include, but is not limited to:

(A) a review of records, interviews with people knowledgeable about the property;

(B) a certification that the environmental engineer has conducted an inspection of the property, the building(s), and adjoining properties, as well as any other industry standards concerning the preparation of this type of environmental assessment;

(C) a noise study is recommended for developments located in close proximity to industrial zones, major highways, active rail lines and civil and military airfields;

(D) a copy of the current FEMA Flood Map encompassing the site and a determination of the flood risk for the proposed Development;

(E) the report should include a statement that clearly states that the person or company preparing the environmental assessment will not materially benefit from the Development in any other way than receiving a fee for the environmental assessment; and

(2) if the report recommends further studies or establishes that environmental hazards currently exist on the Property, or are originating off-site but would nonetheless affect the Property, the Development Owner must act on such a recommendation or provide either a plan for the abatement or elimination of the hazard. Evidence of action or a plan for the abatement or elimination of the hazard must be presented upon Application submittal.

(3) Developments which have had a Phase II Environmental Assessment performed and hazards identified, the Development Owner is required to maintain a copy of said assessment on site available for review by all persons which either occupy the Development or are applying for tenancy.

(4) Developments whose funds have been obligated by TxRD will not be required to supply this information; however, the Development Owners of such Developments are hereby notified that it is their responsibility to ensure that the Development is maintained in compliance with all state and federal environmental hazard requirements.

(5) Those Developments which have or are to receive first lien financing from HUD may submit HUD's environmental assessment report, provided that it conforms with the requirements of this subsection.

#### **§49.10. Compliance Monitoring and Material Non-Compliance.**

(a) The Code, §42(m)(1)(B)(iii), requires the Department as the housing credit agency to include in its QAP a procedure that the Department will follow in monitoring Developments for noncompliance with the provisions of the Code, §42 and in notifying the IRS of such noncompliance of which the Department becomes aware. Such procedure is set out in this QAP and in the Owner's Compliance Manual prepared by the Department's Compliance Division, as amended from time to time. Such procedure only addresses forms and records that may be required by the Department to enable the Department to monitor a Development for violations of the Code and the LURA and to notify the IRS of any such non-compliance. This procedure does not address forms and other records that may be required of Development Owners by the IRS more generally, whether for purposes of filing annual returns or supporting Development Owner tax positions during an IRS audit.

(b) The Department, through the division with responsibility for compliance matters, shall monitor for compliance with all applicable requirements the entire construction phase associated with any Development under this title. The monitoring level for each Development must be based on the amount of risk associated with the Development. The Department shall use the division responsible for credit underwriting matters and the division responsible for compliance matters to determine the amount of risk associated with each Development. After completion of a Development's construction phase, the Department shall periodically review the performance of the Development to confirm the accuracy of the Department's initial compliance evaluation during the construction phase. Developments having financing from TxRD-USDA will be exempt from these inspections, provided that the Applicant provides the Department with copies of all inspections made by TxRD-USDA throughout the construction of the Development within fifteen days of the date the inspection occurred.

(c) The Department will monitor compliance with all covenants made by the Development Owner in the Application and in the LURA, whether required by the Code, Treasury Regulations or other rulings of the IRS, or undertaken by the Development Owner in response to Department requirements or criteria.

(d) The Department may contract with an independent third party to monitor a Development during its construction or rehabilitation and during its operation for compliance with any conditions imposed by the Department in connection with the allocation of housing tax credits to the Development and appropriate state and federal laws, as required by other state law or by the Board. The Department may assign Department staff other than housing tax credit division staff to perform the relevant monitoring functions required by this section in the construction or rehabilitation phase of a Development.

(e) The Department shall create an easily accessible database that contains all Development compliance information developed under this section.

(f) The Development Owner must keep records for each qualified low income building in the Development, showing on a monthly basis (with respect to the first year of a building's Credit Period and on an annual basis, thereafter):

(1) the total number of residential rental Units in the building (including the number of bedrooms and the size in square feet of each residential rental Unit);

(2) the percentage of residential rental Units in the building that are low income Units;

(3) the rent charged for each residential rental Unit in the building including, with respect to low income Units, documentation to support the utility allowance applicable to such Unit;

(4) the number of occupants in each low income Unit;

(5) the low income Unit vacancies in the building and information that shows when, and to whom, all available Units were rented;

(6) the annual income certification of each tenant of a low income Unit, in the form designated by the Department in the Compliance Manual, as may be modified from time to time;

(7) documentation to support each low income tenant's income certification, consistent with the verification procedures required by HUD under Section 8 of the United States Housing Act of 1937 ("Section 8"). In the case of a tenant receiving housing assistance payments under Section 8, the documentation requirement is satisfied if the public housing authority provides a statement to the Development Owner declaring that the tenant's income does not exceed the applicable income limit under the Code, §42(g) as described in the Compliance Manual;

(8) the Eligible Basis and Qualified Basis of the building at the end of the first year of the Credit Period;

(9) the character and use of the nonresidential portion of the building included in the building's Eligible Basis under the Code, §42(d), (e.g. whether tenant facilities are available on a comparable basis to all tenants; whether any fee is charged for use of the facilities; whether facilities are reasonably required by the Development); and

(10) any additional information as required by the Department.

(g) The Development Owner will deliver to the Department within 90 days after the end of each calendar year, the current financial statements, in form and content satisfactory to the Department, itemizing the income and expenses of the Development.

(h) Specifically, to evidence compliance with the requirements of the Code, Section 42(h)(6)(B)(iv) which requires that the LURA prohibit Development Owners of all tax credit Developments placed in service after August 10, 1993 from refusing to lease to persons holding Section 8 vouchers or certificates because of their status as holders of such Section 8 voucher or certificate, Development Owners must:

(1) maintain a written management plan that is available for review upon request. Such management plan must state an intention of the Development Owner to comply with state and federal fair housing and anti-discrimination laws. Owners and managers of all tax credit Developments placed in service after August 10, 1993, are prohibited from having policies, practices, procedures and/or screening criteria which exclude applicants solely because they have a Section 8 voucher or certificate. Such management plan must also clearly state the objectives identified in subparagraphs (A) through (C) of this paragraph. Failure to have the required objectives set forth clearly in the management plan or failure to follow such required objectives in the operation of the Development will be treated by the Department as noncompliance with the LURA.

(A) prospective applicants who hold Section 8 vouchers or certificates are welcome to apply and will be provided the same consideration for occupancy as any other applicant;

(B) any minimum income requirements for Section 8 voucher and certificate holders will only be applied to the portion of the rent the prospective tenant would pay, provided, however, that if Section 8 pays 100% of the rent for the Unit, the Development Owner may establish other reasonable minimum income requirements to ensure that the tenant has the financial resources to meet daily living expenses. Minimum income requirements for Section 8 voucher and certificate holders will not exceed 2.5 times the portion of rent the tenant pays; and

(C) all other screening criteria, including employment policies or procedures and other leasing criteria (such as rental history, credit history, criminal history, etc.) must be applied to applicants uniformly and in a manner consistent with the Texas and federal Fair Housing Acts and with Department and Code requirements;

(2) post Fair Housing logos and the Fair Housing poster in the leasing office;

(3) approve and distribute a written Affirmative Marketing Plan to the property management and on-site staff.

(4) communicate annually during the first quarter of each year in writing with the director of each Section 8 program which has jurisdiction within the geographic area where the Development is located. Such communication will include information on the unit characteristics and rents and will advise the administrating agency that the property accepts Section 8 vouchers and certificates and will treat referrals in a fair and equal manner. Copies of such correspondence must be available during on-site reviews conducted by the Department.

(i) Record retention provision. The Development Owner is required to retain the records described in subsection (f) of this section for at least six years after the due date (with extensions) for filing the federal income tax return for that year; however, the records for the first year of the Credit Period must be retained for at least six years beyond the due date (with extensions) for filing the federal income tax return for the last year of the Compliance Period of the building.

(j) Certification and Review.

(1) On or before February 1st of each year, the Department will send each Development Owner of a completed Development an Owner's Certification of Program Compliance (form provided by the Department) to be completed by the Owner and returned to the Department on or before the first day of March of each year in the Compliance Period. Any Development for which the certification is not received by the Department, is received past due, or is incomplete, improperly completed or not signed by the Development Owner, will be considered not in compliance with the provisions of §42 of the Code and reported to the IRS on Form 8823, Low Income Housing Credit Agencies Report of Non Compliance. The Owner Certification of Program Compliance shall cover the proceeding calendar year and shall include at a minimum the following statements of the Development Owner:

- (A) the Development met the minimum set-aside test which was applicable to the Development;
- (B) there was no change in the Applicable Fraction of any building in the Development, or that there was a change, and a description of the change;
- (C) the owner has received an annual income certification from each low income tenant and documentation to support that certification;
- (D) each low income Unit in the Development was rent-restricted under the Code, §42(g)(2) and Treasury Regulation §1.42-10 regarding utility allowances;
- (E) all Units in the Development were for use by the general public and used on a non-transient basis (except for transitional housing for the homeless provided under the Code, §42(I)(3)(B)(iii));
- (F) No finding of discrimination under the Fair Housing Act, 42 U.S.C. 3601-3619, has occurred for the Development. A finding of discrimination includes an adverse final decision by the Secretary of HUD, 24 CFR 180.680, an adverse final decision by a substantially equivalent state or local fair housing agency, 42 U.S.C. 3616a(a)(1), or an adverse judgement from a federal court;
- (G) each building in the Development was suitable for occupancy, taking into account local health, safety, and building codes, and the state or local government unit responsible for making building code inspections did not issue a report of a violation for any building or low income Unit in the Development. If a violation report or notice was issued by the governmental unit, the Development Owner must attach either a statement summarizing the violation report or notice or a copy of the violation report or notice, and in addition, the Development Owner must state whether the violation has been corrected;
- (H) either there was no change in the Eligible Basis (as defined in the Code, §42(d)) of any building in the Development, or that there has been a change, and the nature of the change;
- (I) all tenant facilities included in the Eligible Basis under the Code, §42(d), of any building in the Development, such as swimming pools, other recreational facilities, and parking areas, were provided on a comparable basis without charge to all tenants in the building;
- (J) if a low income Unit in the Development became vacant during the year, reasonable attempts were, or are being, made to rent that Unit or the next available Unit of comparable or smaller size to tenants having a qualifying income before any other Units in the Development were, or will be, rented to tenants not having a qualifying income;
- (K) if the income of tenants of a low income Unit in the Development increased above the limit allowed in the Code, §42(g)(2)(D)(ii), the next available Unit of comparable or smaller size in the Development was, or will be, rented to tenants having a qualifying income;
- (L) a LURA including an Extended Low Income Housing Commitment as described in the Code, §42(h)(6)(B), was in effect for buildings subject to the Revenue Reconciliation Act of 1989, §7106(c)(1) (generally any building receiving an allocation after 1989), including the requirement under the Code, §42(h)(6)(B)(iv) that a Development Owner cannot refuse to lease a Unit in the Development to an applicant because the applicant holds a voucher or certificate of eligibility under Section 8, and the Development Owner has not refused to lease a Unit to an applicant because of his or her status as a holder of a Section 8 voucher nor is the Development out of compliance with the provisions, including any special provisions, outlined in the Extended Low Income Housing Commitment;
- (M) no change in the ownership of a Development has occurred during the reporting period;
- (N) the Development Owner has not been notified by IRS that the Development is no longer "a qualified low income housing Development" within the meaning of the Code, §42;
- (O) the Development met all terms and conditions which were recorded in the LURA, or if no LURA was required to be recorded, the Development met all representations of the Development Owner in the Application for credits;
- (P) if the Development Owner received its Housing Credit Allocation from the portion of the state ceiling set-aside for Developments involving Qualified Nonprofit Organizations under the Code, §42(h)(5), a Qualified Nonprofit Organization owned an interest in and materially participated in the operation of the Development within the meaning of the Code, §469(h);
- (Q) all low income Units in the Development were used on a nontransient basis (except for transitional housing for the homeless provided under §42(i)(3)(B)(iii) of the Code or single-room-occupancy units rented on a month-by-month basis under §42(i)(3)(B)(iv) of the Code; and
- (R) no low income Units in the Development were occupied by households in which all members were Students.

(2) Review.

(A) The Department staff will review each Owner's Certification of Program Compliance for compliance with the requirements of the Code, §42.

(B) The Department will perform on-site inspections of all buildings in each low income housing Development by the end of the second calendar year following the year the last building in the Development is placed in



service and, for at least 20% of the low income Units in each Development, inspect the Units and review the low income certifications, the documentation the Development Owner has received to support the certifications, the rent records for each low income tenant in those Units, and any additional information that the Department deems necessary.

(C) The Department will perform on site monitoring reviews at least once every three years on low income housing Developments. A monitoring review will include an inspection of the income certification, the documentation the Development Owner has received to support that certification, the rent record for each low income tenant, and a property inspection including individual Units and any additional information that the Department deems necessary, for at least 20% of the low income Units in those Developments.

(D) The Department may, at the time and in the form designated by the Department, require the Development Owners to submit for compliance review, information on tenant income and rent for each low income Unit, and may require a Development Owner to submit for compliance review copies of the tenant files, including copies of the income certification, the documentation the Development Owner has received to support that certification and the rent record for any low income tenant.

(E) The Department will randomly select which low income Units and tenant records are to be inspected and reviewed by it. The Department may determine to review tenant records wherever they are stored, whether on-site or off-site. Units and tenant records to be inspected and reviewed will be selected in a manner that will not give Development Owners advance notice that a particular Unit and tenant records for a particular year will or will not be inspected or reviewed. However, the Department will give reasonable notice to the Development Owner that an on-site inspection or a tenant record review will occur, so that the Development Owner may notify tenants of the inspection or assemble tenant records for review.

(3) Exception. The Department may, at its discretion, enter into a Memorandum of Understanding with the TxRD-USDA, whereby the TxRD-USDA agrees to provide to the Department information concerning the income and rent of the tenants in buildings financed by the TxRD-USDA under its §515 program. Owners of such buildings may be excepted from the review procedures of subparagraph (B) or (C) of this paragraph or both; however, if the information provided by TxRD-USDA is not sufficient for the Department to make a determination that the income limitation and rent restrictions of the Code, §42(g)(1) and (2), are met, the Development Owner must provide the Department with additional information. TxRD-USDA Developments satisfy the definition of Qualified Elderly Development if they meet the definition for elderly used by TxRD-USDA, which includes persons with disabilities.

(k) Inspection provision. The Department retains the right to perform an on site inspection of any low income housing Development including all books and records pertaining thereto through either the end of the Compliance Period or the end of the period covered by any Extended Low Income Housing Commitment, whichever is later. An inspection under this subsection may be in addition to any review under paragraph (j)(2) of this section.

(l) The Department retains the right to require the Owner to submit tenant data in the electronic format as developed by the Department. The Department will provide general instruction regarding the electronic transfer of data.

(m) Notices to Owner. The Department will provide prompt written notice to the Development Owner if the Department does not receive the certification described in subsection (g)(1) of this section or discovers through audit, inspection, review or any other manner, that the Development is not in compliance with the provisions of the Code, §42 or the LURA. The notice will specify a correction period which will not exceed 90 days, during which the Development Owner may respond to the Department's findings, bring the Development into compliance, or supply any missing certifications. The Department may extend the correction period for up to six months if it determines there is good cause for granting an extension. If any communication to the Development Owner under this section is returned to the Department as unclaimed or undeliverable, the Development may be considered not in compliance without further notice to the Development Owner.

(n) Notice to the IRS.

(1) Regardless of whether the noncompliance is corrected, the Department is required to file IRS Form 8823 with the IRS. IRS Form 8823 will be filed not later than 45 days after the end of the correction period specified in the Notice to Owner, but will not be filed before the end of the correction period. The Department will explain on IRS Form 8823 the nature of the noncompliance and will indicate whether the Development Owner has corrected the noncompliance or has otherwise responded to the Department's findings.

(2) The Department will retain records of noncompliance or failure to certify for six years beyond the Department's filing of the respective IRS Form 8823. In all other cases, the Department will retain the certification and records described in §49.10 of this title for three years from the end of the calendar year the Department receives the certifications and records.

(o) Notices to the Department. A Development Owner must notify the division responsible for compliance within the Department in writing of the events listed in paragraphs (1) through (3) of this subsection.

(1) prior to any sale, transfer, exchange, or renaming of the Development or any portion of the Development. For Rural Developments that are federally assisted or purchased from HUD, the Department shall not authorize the sale of any portion of the Development;

(2) any change of address to which subsequent notices or communications shall be sent; or

(3) within thirty days of the placement in service of each building, the Department must be provided the in service date of each building.

(p) Liability. Compliance with the requirements of the Code, §42 is the sole responsibility of the Development Owner of the building for which the credit is allowable. By monitoring for compliance, the Department in no way assumes any liability whatsoever for any action or failure to act by the Development Owner including the Development Owner's noncompliance with the Code, §42.

(q) These provisions apply to all buildings for which a low income housing credit is, or has been, allowable at any time. The Department is not required to monitor whether a building or Development was in compliance with the requirements of the Code, §42, prior to January 1, 1992. However, if the Department becomes aware of noncompliance that occurred prior to January 1, 1992, the Department is required to notify the IRS in a manner consistent with subsection (j) of this section.

(r) Material Non-Compliance. In accordance with §49.5(b)(6), the Department will disqualify an Application for funding if the Applicant or other Persons, general partner, general contractor, and their respective principals or Affiliates active in the ownership or control of low income housing located in the State of Texas is determined by the Department to be in Material Non-Compliance on the date the Pre-Application Round opens. The Department will classify a property as being in Material Non-Compliance when such property has a Non-Compliance score that is equal to or exceeds 30 points in accordance with the methodology and point system set forth in this subsection.

(1) Each property that has received an allocation from the Department will be scored according to the type and number of non-compliance events as it relates to the tax credit program or other Department programs. All projects regardless of status that have received an allocation are scored even if the project no longer actively participates in the program.

(2) Uncorrected non-compliance will carry the maximum number of points until the non-compliance event has been reported corrected by the Department. Once reported corrected by the Department the score will reduce to the "corrected value" in paragraph (4) of this subsection. Corrected non-compliance will no longer be included in the project score three years after the date the non-compliance was reported corrected by the Department. Non-compliance events that occurred and were identified by the Department through the issuance of the IRS form 8823 prior to January 1, 1998 are assigned corrected point values to each non-compliance event. The score for these events will no longer be included in the project's score three years after the date the form 8823 was executed. For Applicants under this QAP, a non-compliance report will be run by the Department's Compliance Division on the date the Pre-Application Round opens. Any corrective action documentation affecting this compliance status score must be received by the Department no later than November 15, 2001.

(3) Events of non-compliance are categorized as either "project events" or "unit/building events". Project events of non-compliance affect all the buildings in the property. However, the property will receive only one score for the event rather than a score for each building. Other types of non-compliance are identified individually by unit. This type of non-compliance will receive the appropriate score for each building cited with an event. The building scores accumulate towards the total score of the project.

(4) Each type of non-compliance is assigned a point value. The point value for non-compliance is reduced upon correction of the non-compliance. The scoring point system and values are as described in subparagraphs (A) and (B) of this paragraph. The point system weighs certain types of non-compliance more heavily than others; therefore certain non-compliance events carry a sufficient number of points to automatically place the property in Material Non-Compliance. However other types of non-compliance by themselves do not warrant the classification of Material Non-Compliance. Multiple occurrences of these types of non-compliance events may produce enough points to cause the property to be in Material Non-Compliance.

(A) Project Non-Compliance items are identified in clauses (i) through (xviii) of this subparagraph.

(i) Major property condition violations. Project displays major violations of health and safety standards documented by the city. Uncorrected is 30 points. Corrected is 20 points.

(ii) Failure to meet minimum low-income occupancy levels. Project failed to meet required minimum low-income occupancy levels of 20/50 (20% of the units occupied by tenants with household incomes of less than or equal to 50% of area median gross income) or 40/60. Uncorrected is 20 points. Corrected is 10 points.

(iii) Failure to meet additional State required rent and occupancy restrictions. Project has failed to meet state restrictions that exist in addition to the federal requirements. Uncorrected is 10 points. Corrected is 3 points.

(iv) Failure to provide required supportive services as promised at application. Uncorrected is 10 points. Corrected is 3 points.

(v) Failure to provide housing to the elderly as promised at application. Uncorrected is 10 points. Corrected is 3 points.

(vi) Failure to provide special needs housing. Project has failed to provide housing for tenants with special needs as promised at application. Uncorrected is 10 points. Corrected is 3 points.

(vii) No evidence or failure to certify to non-profit material participation. Uncorrected is 10 points. Corrected is 3 points.

(viii) Owner refused to lease to holder of rental assistance certificate/voucher because of the status of the prospective tenant as such a holder. Uncorrected is 30 points. Corrected is 10 points.

(ix) Changes in eligible basis. Changes occur when common areas become commercial; fees are charged for facilities, etc. Uncorrected is 3 points. Corrected is 1 point.

(x) LURA not in effect. The LURA was not executed within the required time period. Uncorrected is 3 points. Corrected is 1 point.

(xi) Owner failed to pay fees or allow on-site monitoring review. Uncorrected is 3 points. Corrected is 1 point.

(xii) Failure to submit annual, monthly, or quarterly reports. Uncorrected is 3 points. Corrected is 1 point.

(xiii) Pattern of minor property condition violations. Project displays a pattern of property violations. However those violations do not impair essential services and safeguards for tenants. Uncorrected is 3 points. Corrected is 1 point.

(xiv) Owner failed to make available or maintain management plan. Uncorrected is 10 points. Corrected is 3 points.

(xv) Owner failed to post Fair Housing Logo and/or poster in leasing offices. Uncorrected is 10 points. Corrected is 3 points.

(xvi) Owner failed to approve and distribute Affirmative Marketing Plan. Uncorrected is 10 points. Corrected is 3 points.

(xvii) Owner failed to provide required annual notification to local administering agency for the Section 8 program. Uncorrected is 10 points. Corrected is 3 points.

(xviii) Project is out of compliance and never expected to comply. Uncorrected is 30 points. Not correctable.

(B) Unit Non-Compliance items are identified in clauses (i) through (ix) of this subparagraph.

(i) Unit not leased to Low Income Household. Project has units that are leased to households that do not meet the income requirements. Uncorrected is 3 points. Corrected is 1 point.

(ii) Unit(s) occupied by students. Project has units leased to non-qualified students. Typically, full-time students are non-qualified. Uncorrected is 3 points. Corrected is 1 point.

(iii) Units used on transient basis. Project has units that are leased for less than six months. Uncorrected is 3 points. Corrected is 1 point.

(iv) Unit not available to general public. Uncorrected is 3 points. Corrected is 1 point.

(v) Income of household increased above the re-certification limit and unit not replaced. Uncorrected is 3 points. Corrected is 1 point.

(vi) Rent exceeds rent limit. Project has units in which the rent exceeds the allowable program limits. Uncorrected is 3 points. Corrected is 1 point.

(vii) Utility allowance not calculated properly or not available for review. Uncorrected is 3 points. Corrected is 1 point.

(viii) Income not certified or documentation not maintained. Project management has not maintained tenant income certifications or supporting documentation. Uncorrected is 3 points. Corrected is 1 point.

(ix) Failure to annually inspect HOME units. Project has failed to inspect units as required by the HOME program. Uncorrected is 3 points. Corrected is 1 point.

(x) Units not available for occupancy due to natural disaster or hazard due to no fault of the Owner. This carries no point value.

#### **§49.11. Housing Credit Allocations.**

(a) In making a Housing Credit Allocation under this chapter, the Department shall rely upon information contained in the Applicant's Application to determine whether a building is eligible for the credit under the Code, §42. The Applicant shall bear full responsibility for claiming the credit and assuring that the Development complies with the requirements of the Code, §42. The Department shall have no responsibility for ensuring that an Applicant who receives a housing credit allocation from the Department will qualify for the housing credit.

(b) The Housing Credit Allocation Amount shall not exceed the dollar amount the Department determines is necessary for the financial feasibility and the long term viability of the Development throughout the Compliance Period. Such determination shall be made by the Department at the time of issuance of the Commitment Notice or Determination Notice; at the time the Department makes a Housing Credit Allocation; and/or the date the building is placed in service. Any Housing Credit Allocation Amount specified in a Commitment Notice, Determination Notice or Carryover Allocation Document is subject to change by the Department dependent upon such determination. Such a determination shall be made by the Department based on its evaluation and procedures, considering the items specified in the Code, §42(m)(2)(B), and the department in no way or manner represents or warrants to any applicant, sponsor, investor, lender or other entity that the Development is, in fact, feasible or viable.

(c) The General Contractor hired by the Applicant must meet specific criteria as defined by the Seventy-fifth Legislature. A general contractor hired by an applicant or an applicant, if the applicant serves as general contractor must demonstrate a history of constructing similar types of housings without the use of federal tax credits. Evidence must be submitted to the Department which sufficiently documents that the general contractor has constructed some housing without the use of low income housing credits. This documentation will be required as a condition of the commitment notice or carryover agreement, and must be complied with prior to commencement of construction and at cost certification and final allocation of credits.

(d) All Carryover Allocations will be contingent upon the following:

(1) A current original plat of survey of the land, prepared by a duly licensed Texas Registered Professional Land Surveyor. Such survey shall conform to standards prescribed in the Manual of Practice for Land Surveying in Texas as promulgated and amended from time to time by the Texas Surveyors Association as more fully described in the Carryover Procedures Manual.

(2) A review of information provided by the IRS as permitted pursuant to IRS Form 8821, Tax Information Authorization, for the release of tax information relating to non-disclosure or recapture issues. Each Applicant must execute and provide to the Department Form 8821 within ten business days of the issuance of a Commitment Notice or Determination Notice. The form must be signed and executed on behalf of the Development Owner. If any issues of recapture or non-disclosure are identified by the IRS, the Board may determine if a Carryover Allocation will be made.

(3) Attendance of the Development Owner and Development architect at eight hours of Fair Housing training.

(4) the Development Owner's closing of the construction loan shall occur not later than the second Friday in June of the year after the execution of the Carryover Allocation Document with the possibility of a one-time 30 day extension as described in §49.13 of this title. Copies of the closing documents must be submitted to the Department within two weeks after the closing. At the time of submission of Construction Closing documentation, the Development Owner must also submit a Management Plan and a Affirmative Marketing Plan as further described in the Carryover Allocation Procedures Manual. The Carryover Allocation will automatically be revoked if the Development Owner fails to meet the aforementioned closing deadline, and all credits previously allocated to that Development will be returned to the general pool for reallocation.

(5) the Development Owner must commence and continue substantial construction activities not later than the second Friday in November of the year after the execution of the Carryover Allocation Document with the possibility of an extension as described in §49.13(j) of this title. Substantial construction activities for new Developments will generally be defined as post foundation construction activities. Evidence of such activity shall be provided in a format prescribed by the Department in the LIHTC Progress Report – Commencement of Construction which will document progress towards placing the Development in service in an expeditious manner.

(e) An allocation will be made in the name of the Applicant identified in the related Commitment Notice or Determination Notice. If an allocation is made in the name of the party expected to be the general partner in an eventual owner partnership, the Department may, upon request, approve a transfer of allocation to such owner partnership in which such party is the sole general partner. Any other transfer of an allocation will be subject to review and approval by the Department. The approval of any such transfer does not constitute a representation to the effect that such transfer is permissible under §42 of the Code or without adverse consequences thereunder, and the Department may condition its approval upon receipt and approval of complete documentation regarding the new owner including all the criteria for scoring, evaluation and underwriting, among others, which were applicable to the original Applicant.

(f) The Department shall make a Housing Credit Allocation, either in the form of IRS Form 8609, with respect to current year allocations for buildings placed in service, or in the Carryover Allocation Document, for buildings not yet placed in service, to any Development Owner who holds a Commitment Notice which has not expired, and for which all fees as specified in §49.13 of this title, have been received by the Department. For Tax Exempt Bond Developments, the Housing Credit Allocation shall be made in the form of a Determination Notice. For an IRS Form 8609 to be issued with respect to a building in a Development with a Housing Credit Allocation, satisfactory evidence must be received by the Department that such building is completed and has been placed in service in accordance with the provisions of the Department's Cost Certification Procedures Manual. The manual will require, in addition to other items, that a self-

evaluation form for compliance with Americans with Disabilities Act, Fair Housing Act and Section 504 of the Rehabilitation Act has been completed by the Owner. The Department shall mail or deliver IRS Form 8609 (or any successor form adopted by the Internal Revenue Service) to the Development Owner, with Part I thereof completed in all respects and signed by an authorized official of the Department. The delivery of the IRS Form 8609 will occur only after the Development Owner has complied with all procedures and requirements listed within the Cost Certification Procedures Manual. Regardless of the year of Application to the Department for low income housing tax credits, the current year's Cost Certification Procedures Manual must be utilized when filing all cost certification requests. A separate housing credit allocation shall be made with respect to each building within a Development which is eligible for a housing credit; provided, however, that where an allocation is made pursuant to a Carryover Allocation Document on a Development basis in accordance with the Code, §42(h)(1)(F), a housing credit dollar amount shall not be assigned to particular buildings in the Development until the issuance of IRS Form 8609s with respect to such buildings.

(g) In making a Housing Credit Allocation, the Department shall specify a maximum Applicable Percentage, not to exceed the Applicable Percentage for the building permitted by the Code, §42(b), and a maximum Qualified Basis amount. In specifying the maximum applicable percentage and the maximum Qualified Basis amount, the Department shall disregard the first-year conventions described in the Code, §42(f)(2)(A) and §42(f)(3)(B). The housing credit allocation made by the Department shall not exceed the amount necessary to support the extended low income housing commitment as required by the Code, §42(h)(6)(C)(i).

(h) Development inspections shall be required to show that the Development is built or rehabilitated according to required plans and specifications. At a minimum, all Development inspections must include an inspection for quality during the construction process while defects can reasonably be corrected and a final inspection at the time the Development is placed in service. All such Development inspections shall be performed by the Department or by an independent, third party inspector acceptable to the Department. The Development Owner shall pay all fees and costs of said inspections as described in §49.13(g) of this title.

(i) After the entire Development is placed in service, which must occur prior to the deadline specified in the Carryover Allocation Document, the Development Owner shall be responsible for furnishing the Department with documentation which satisfies the requirements set forth in the Cost Certification Procedures Manual. A newly constructed or rehabilitated building is not placed in service until all units in such building have been completed and certified by the appropriate local authority or registered architect as ready for occupancy. The Cost Certification must be submitted for the entire Development, therefore partial Cost Certifications are not allowed. The Department may require copies of invoices and receipts and statements for materials and labor utilized for the new construction or rehabilitation and, if applicable, a closing statement for the acquisition of the Development as well as for the closing of all interim and permanent financing for the Development. If the Applicant does not fulfill all representations made in the Application, the Department may make reasonable reductions to the tax credit amount allocated via the IRS Form 8609 or may withhold issuance of the IRS Form 8609s until these representations are met.

#### **§49.12. Department Records; Certain Required Filings.**

(a) At all times during each calendar year the Department shall maintain a record of the following:

- (1) the cumulative amount of the State Housing Credit Ceiling that has been reserved pursuant to reservation notices during such calendar year;
- (2) the cumulative amount of the State Housing Credit Ceiling that has been committed pursuant to Commitment Notices during such calendar year;
- (3) the cumulative amount of the State Housing Credit Ceiling that has been committed pursuant to Carryover Allocation Documents during such calendar year;
- (4) the cumulative amount of housing credit allocations made during such calendar year; and
- (5) the remaining unused portion of the State Housing Credit Ceiling for such calendar year.

(b) The Department shall maintain for each Application an Application Log that tracks the Application from the date of its submission. The Application Log will contain, at a minimum, the information identified in paragraphs (1) through (9) of this subsection.

- (1) the names of the Applicant and Related Parties, the owner contact name and phone number, and full contact information for all members of the Development Team;
- (2) the name, physical location, and address of the Development, including the relevant region of the state;
- (3) the number of Units and the amount of housing tax credits requested for allocation by the Department to the Applicant;
- (4) any set-aside category under which the Application is filed;
- (5) the requested and awarded score of the Application in each scoring category adopted by the Department under the Qualified Allocation Plan;

(6) any decision made by the Department or Board regarding the Application, including the Department's decision regarding whether to underwrite the Application and the Board's decision regarding whether to allocate housing tax credits to the Development;

(7) the names of persons making the decisions described by paragraph (6) of this subsection, including the names of Department staff scoring and underwriting the Application, to be recorded next to the description of the applicable decision;

(8) the amount of housing tax credits allocated to the Development; and

(9) a dated record and summary of any contact between the Department staff, the Board, and the Applicant or any Related Parties.

(c) The Department shall mail to the Internal Revenue Service, not later than the 28th day of the second calendar month after the close of each calendar year during which the Department makes housing credit allocations, the original of each completed (as to Part I) IRS Form 8609, a copy of which was mailed or delivered by the Department to a Development Owner during such calendar year, along with a single completed IRS Form 8610, Annual Low Income Housing Credit Agencies Report. When a Carryover Allocation is made by the Department, a copy of IRS Form 8609 will be mailed or delivered to the Development Owner by the Department in the year in which the building(s) is placed in service, and thereafter the original will be mailed to the Internal Revenue Service in the time sequence in this subsection. The original of the Carryover Allocation Document will be filed by the Department with IRS Form 8610 for the year in which the allocation is made. The original of all executed Agreement and Election Statements shall be filed by the Department with the Department's IRS Form 8610 for the year a housing credit allocation is made as provided in this section. The Department shall be authorized to vary from the requirements of this section to the extent required to adapt to changes in IRS requirements.

#### **§49.13. Program Fees and Extensions.**

(a) Pre-Application Fee. Each Applicant that submits a Pre-Application shall submit to the Department, along with such Pre-Application, a non refundable Pre-Application fee, in the amount of \$15 per Unit. Units for the calculation of the Pre-Application Fee include all Units within the Development, including tax credit, market rate and owner-occupied Units. Pre-Applications without the specified Pre-Application Fee in the form of a cashiers check will not be accepted. Community Housing Development Organizations (CHDOs) will receive a discount of 10% off the calculated Pre-Application fee.

(b) Application Fee. Each Applicant that submits an Application shall submit to the Department, along with such Application, an Application fee. For Applicants having submitted a Pre-Application which met Pre-Application Threshold and for which a Pre-Application fee was paid, the Application fee will be \$5 per Unit. For Applicants not having submitted a Pre-Application, the Application fee will be \$20 per Unit. Units for the calculation of the Application Fee include all Units within the Development, including tax credit, market rate and owner-occupied Units. Applications without the specified Application Fee in the form of a cashiers check will not be accepted. Community Housing Development Organizations will receive a discount of 10% off the calculated Application fee.

(c) Refunds of Pre-Application or Application Fees. The Department shall refund the balance of any fees collected for a Pre-Application or Application that is withdrawn by the Applicant or that is not fully processed by the Department. The amount of refund on Applications not fully processed by the Department will be commensurate with the level of review completed. Intake and data entry will constitute 30% of the review, the site visit will constitute 45% of the review, and Threshold and Selection review will constitute 25% of the review. The Department must provide the refund to the Applicant not later than the 30<sup>th</sup> day after the date the last official action is taken with respect to the Application.

(d) Third Party Underwriting Fee. Applicants will be notified in writing prior to the evaluation of a Development by an independent third party underwriter in accordance with §49.7(b)(3) of this title if such a review is required. The fee must be received by the Department prior to the engagement of the underwriter. The fees paid by the Development Owner to the Department for the third party underwriting will be credited against the commitment fee established in subsection (e) of this section, in the event that a Commitment Notice or Determination Notice is issued by the Department to the Development Owner.

(e) Commitment or Determination Notice Fee. Each Development Owner that receives a Commitment Notice or Determination Notice shall submit to the Department, not later than the expiration date on the commitment notice, a non-refundable commitment fee equal to 4% of the annual housing credit allocation amount. The commitment fee shall be paid by cashier's check.

(f) Compliance Monitoring Fee. Upon the Development being placed in service, the Development Owner will pay a compliance monitoring fee in the form of a cashier's check equal to \$25 per tax credit Unit per year or \$100, whichever is greater. Payment of the first year's compliance monitoring fee must be received by the Department prior to the release of the IRS Form 8609 on the Development. Subsequent anniversary dates on which compliance monitoring fee payments are due shall be determined by the date the Development was placed in service.

(g) Building Inspection Fee. Development Owners must pay for any inspections that the Department requires, whether during construction or after completion, and estimated charges for all such inspections may be aggregated and distributed among the Developments according to Development size, cost or other criteria. All outstanding building inspection fees must be received by the Department prior to the release of the IRS Form 8609.

(h) Public Information Requests. Public information requests are processed by the Department in accordance with the provisions of the Government Code, Chapter 552. The Texas Building and Procurement Commission (formerly General Services Commission) determines the cost of copying, and other costs of production.

(i) Amendment of Fees by the Department and Notification of Fees. All fees charged by the Department in the administration of the tax credit program will be revised by the Department from time to time as necessary to ensure that such fees compensate the Department for its administrative costs and expenses. The Department shall publish not later than July 1 of each year a schedule of Application fees that specifies the amount to be charged at each stage of the application process.

(j) Extension Requests. All extension requests relating to the Commitment Notice, Carryover, Closing of Construction Loan, Substantial Construction Commencement, Placed in Service or Cost Certification requirements shall be submitted to the Department in writing and be accompanied by a non-refundable extension fee in the form of a cashier's check in the amount of \$2,500. Such requests must be submitted to the Department at least ten business days prior to the date for which an extension is being requested. The extension request shall specify a requested extension date and the reason why such an extension is required. The Department, in its sole discretion, may consider and grant such extension requests for all items except for the Closing of Construction Loan and Substantial Construction Commencement. The Board may grant extensions, for the Closing of Construction Loan and Substantial Construction Commencement. The Board may waive related fees.

#### **§49.14. Manner and Place of Filing Applications and Other Required Documentation.**

(a) An Application or Pre-Application for a Housing Credit Allocation from the State Housing Credit Ceiling and the required Application or Pre-Application fee as described in §49.13(a) and (b) of this title must be filed during the Application Acceptance Periods published periodically in the Texas Register.

(b) Applications for a Determination Notice for a Tax Exempt Bond Development may be submitted to the Department as described in paragraphs (1) and (2) of this subsection:

(1) Applicants which receive advance notice of a Program Year 2002 reservation as a result of the Texas Bond Review Board's (TBRB) lottery for the private activity volume cap must file a complete Application per the requirements of §49.7(h) of this title not later than 60 days after the date of the TBRB lottery. Such filing must be accompanied by the Application fee described in §49.13(b) of this title.

(2) Applicants which receive advance notice of a Program Year 2002 reservation after being placed on the waiting list as a result of the TBRB lottery for private activity volume cap must submit Volume 1 of the Application prior to the Applicant's bond reservation date as assigned by the TBRB. The Application fee described in §49.13(b) of this title and any outstanding documentation required under §49.7(i) of this title must be submitted to the Department at least 45 days prior to the Board meeting at which the decision to issue a Determination Notice would be made.

(c) All Applications, letters, documents, or other papers filed with the Department will be received only between the hours of 8:00 a.m. and 5:00 p.m. on any day which is not a Saturday, Sunday or a holiday established by law for state employees.

(d) All notices, information, correspondence and other communications under this title shall be deemed to be duly given if delivered or sent and effective in accordance with this subsection. Such correspondence must reference that the subject matter is pursuant to the Tax Credit Program and must be addressed to the Low Income Housing Tax Credit Program, Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, TX 78711-3941 or for hand delivery or courier to 507 Sabine, Suite 400, Austin, Texas 78701. Every such correspondence required or contemplated by this title to be given, delivered or sent by any party may be delivered in person or may be sent by courier, telecopy, express mail, telex, telegraph or postage prepaid certified or registered air mail (or its equivalent under the laws of the country where mailed), addressed to the party for whom it is intended, at the address specified in this subsection. Notice by courier, express mail, certified mail, or registered mail will be effective on the date it is officially recorded as delivered by return receipt or equivalent and in the absence of such record of delivery it will be presumed to have been delivered by the fifth business day after it was deposited, first-class postage prepaid, in the United States first class mail. Notice by telex or telegraph will be deemed given at the time it is recorded by the carrier in the ordinary course of business as having been delivered, but in any event not later than one business day after dispatch. Notice not given in writing will be effective only if acknowledged in writing by a duly authorized officer of the Department.

#### **§49.15. Withdrawals, Cancellations, Amendments.**

(a) An Applicant may withdraw an Application prior to receiving a Commitment Notice, Determination Notice, Carryover Allocation Document or Housing Credit Allocation, or may cancel a Commitment Notice or Determination Notice by submitting to the Department a notice, as applicable, of withdrawal or cancellation.

(b) The Board in its sole discretion may allocate credits to a Development Owner in addition to those awarded at the time of the initial Carryover Allocation in instances where there is bona fide substantiation of cost overruns and the Department has made a determination that the allocation is needed to maintain the Development's financial viability as a qualified low income Development.

(c) The Department may, at any time and without additional administrative process, determine to award credits to Developments previously evaluated and awarded credits if it determines that such previously awarded credits are or may be invalid and the owner was not responsible for such invalidity. The Department may also consider an amendment to a Commitment Notice, Determination Notice or Carryover Allocation or other requirement with respect to a Development if the revisions:

- (1) are consistent with the Code and the tax credit program;
- (2) do not occur while the Development is under consideration for tax credits;
- (3) do not involve a change in the number of points scored (unless the Development's ranking is adjusted because of such change);
- (4) do not involve a change in the Development's site; or
- (5) do not involve a change in the set-aside election.

(d) The Department may cancel a Commitment Notice, Determination Notice or Carryover Allocation prior to the issuance of IRS Form 8609 with respect to a Development if:

- (1) the Development Owner or any member of the Development Team, or the Development, as applicable, fails to meet any of the conditions of such Commitment Notice or Carryover Allocation or any of the undertakings and commitments made by the Development Owner in the applications process for the Development;
- (2) any statement or representation made by the Development Owner or made with respect to the Development Owner, the Development Team or the Development is untrue or misleading;
- (3) an event occurs with respect to any member of the Development Team which would have made the Development's Application ineligible for funding pursuant to §49.5 of this title if such event had occurred prior to issuance of the Commitment Notice or Carryover Allocation; or
- (4) the Development Owner, any member of the Development Team, or the Development, as applicable, fails to comply with these Rules or the procedures or requirements of the Department.



## Hillside Apartments

### EXHIBIT 8

#### **§49.16. Waiver and Amendment of Rules.**

(a) The Board, in its discretion, may waive any one or more of these Rules in cases of natural disasters such as fires, hurricanes, tornadoes, earthquakes, or other acts of nature as declared by Federal or State authorities.

(b) The Department may amend this chapter and the Rules contained herein at any time in accordance with the Government Code, Chapter 2001, as may be amended from time to time.

#### **§49.17. Forward Reservations; Binding Commitments.**

(a) Anything in §49.4 of this title or elsewhere in this chapter to the contrary notwithstanding, the Department with approval of the Board may determine to issue commitments of tax credit authority with respect to Developments from the State Housing Credit Ceiling for the calendar year following the year of issuance (each a "forward commitment"). The Department may make such forward commitments:

(1) with respect to Developments placed on a waiting list in any previous Application Round during the year; or

(2) pursuant to an additional Application Round.

(b) If the Department determines to make forward commitments pursuant to a new Application Round, it shall provide information concerning such round in the Texas Register. In inviting and evaluating Applications pursuant to an additional Allocation Round, the Department may waive or modify any of the set-asides set forth in §49.6 of this title and make such modifications as it determines appropriate in the Threshold Criteria, evaluation factors and Selection Criteria set forth in §49.7 of this title and in the dates and times by which actions are required to be performed under this chapter. The Department may also, in an additional Application Round, include Developments previously evaluated within the calendar year and rank such Developments together with those for which Applications are newly received.

(c) Unless otherwise provided in the Commitment Notice with respect to a Development selected to receive a forward commitment or in the announcement of an Application Round for Developments seeking a forward commitment, actions which are required to be performed under this chapter by a particular date within a calendar year shall be performed by such date in the calendar year of the anticipated allocation rather than in the calendar year of the forward commitment.

(d) Any forward commitment made pursuant to this section shall be made subject to the availability of State Housing Credit Ceiling in the calendar year with respect to which the forward commitment is made. No more than 15% of the per capita component of State Housing Credit Ceiling anticipated to be available in the State of Texas in a particular year shall be allocated pursuant to forward commitments to Development Applications carried forward without being ranked in the new Application Round pursuant to subsection (f) of this section. If a forward commitment shall be made with respect to a Development placed in service in the year of such commitment, the forward commitment shall be a "binding commitment" to allocate the applicable credit dollar amount within the meaning of the Code, §42(h)(1)(C).

(e) If tax credit authority shall become available to the Department later in a calendar year in which forward commitments have been awarded, the Department may allocate such tax credit authority to any eligible Development which received a forward commitment, in which event the forward commitment shall be canceled with respect to such Development.

(f) In addition to or in lieu of making forward commitments pursuant to subsection (a) of this section, the Department may determine to carry forward Development Applications on a waiting list or otherwise received and ranked in any Application Round within a calendar year to the subsequent calendar year, requiring such additional information, Applications and/or fees, if any, as it determines appropriate. Development Applications carried forward may, within the discretion of the Department, either be awarded credits in a separate allocation round on the basis of rankings previously assigned or may be ranked together with Development Applications invited and received in a new Application Round. The Department may determine in a particular calendar year to carry forward some Development Applications under the authority provided in this subsection, while issuing forward commitments pursuant to subsection (a) of this section with respect to others.

#### **§49.18. Deadlines for Allocation of Low Income Housing Tax Credits.**

## Hillside Apartments

### EXHIBIT 8

(a) Not later than September 30 of each year, the Department shall prepare and submit to the Board for adoption the draft Qualified Allocation Plan required by federal law for use by the Department in setting criteria and priorities for the allocation of tax credits under the low income housing tax credit program.

(b) The Board shall adopt and submit to the Governor the Qualified Allocation Plan not later than November 15 of each year.

(c) The Governor shall approve, reject, or modify and approve the Qualified Allocation Plan not later than December 1 of each year.

(d) An Applicant for a low income housing tax credit to be issued a Commitment Notice during the Application Round in a calendar year must submit an Application to the Department not later than March 1.

(e) The Board shall review the recommendations of Department staff regarding Applications and shall issue a list of approved Applications each year in accordance with the Qualified Allocation Plan not later than June 30.

(f) The Board shall issue final Commitment Notices for allocations of housing tax credits each year in accordance with the Qualified Allocation Plan not later than July 31.

**Hillside Apartments**

**EXHIBIT 8**

*AGENDA ITEM NO. 3(A)*

**TEXAS DEPARTMENT OF HOUSING  
& COMMUNITY AFFAIRS**

**HOUSING FINANCE DIVISION - MULTIFAMILY**

**REQUEST FOR BOARD APPROVAL  
OF BOND ISSUANCE**

**2001 PRIVATE ACTIVITY MULTIFAMILY REVENUE BONDS**

**HILLSIDE APARTMENTS  
\$12,500,000 Tax Exempt - Series 2001A  
\$400,000 Taxable - Series 2001B**

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*(\*) Preliminary - subject to change*

**Hillside Apartments**

**EXHIBIT 8  
BOARD APPROVAL**

**MEMORANDUM**

**November 14, 2001**

**PROJECT:** Hillside Apartments, 6100 block of Ledbetter, Dallas County, Dallas, Texas 75216

**PROGRAM:** Texas Department of Housing & Community Affairs  
2001 Private-Activity Multifamily Mortgage Revenue Bonds  
**(Reservation received 8/21/2001)**

**ACTION REQUESTED:** Approve the issuance of multifamily mortgage revenue bonds (the "Bonds") by the Texas Department of Housing and Community Affairs (the "Department"). The Bonds will be issued under Chapter 1371, Texas Government Code, as amended, and under Chapter 2306, Texas Government Code, the Department's Enabling Act (the "Act"), which authorizes the Department to issue its revenue bonds for its public purposes as defined therein.

**PURPOSE:** The proceeds of the Bonds will be used to fund a mortgage loan (the "Mortgage Loan") to TX Hillside Apartments, L.P., a Texas limited partnership (the "Borrower"), to finance the acquisition, construction, equipment and long-term financing of a new, 236 unit multifamily residential rental project located on the 6100 block of Ledbetter at Pemberton Hill Road, Dallas County, Dallas, Texas 75216 (the "Project"). A portion of the Bonds will be tax-exempt by virtue of the Project's qualifying as a residential rental project.

**BOND AMOUNT:** \$12,500,000\* Tax-exempt bonds Series 2001A  
400,000 \* Taxable bonds Series 2001B  
**\$12,900,000**

**\* The aggregate principal amount of the Bonds will be determined by the Department based on its rules, underwriting, the cost of construction of the Project and the amount for which Bond Counsel can deliver its Bond Opinion.**

**ANTICIPATED CLOSING DATE:** The Department received a volume cap allocation for the Bonds on August 21, 2001 pursuant to the Texas Bond Review Board's 2001 Private Activity Bond Allocation Program. While the Department is required to deliver the Bonds on or before December 19, 2001, the anticipated closing date is December 14, 2001

**BORROWER:** TX Hillside Apartments, L.P., the sole general partner of which

## Hillside Apartments

### EXHIBIT 8

is TX Hillside Development Corporation, a Texas corporation  
The principal of the general partner is Brain Potashnik.

#### **COMPLIANCE HISTORY:**

The Compliance Report reveals that the principles above have a combined total of eleven properties monitored by the Department. Of the eleven properties, seven have received a compliance score. Two received a score of zero (no compliance issues); two received a score or three; and three properties received scores of 1, 10, and 14 respectively, all of which are below the material non-compliance threshold score of 30 points.

~~Brian Potashnik, the principal of the Borrower, has eight (8) tax credit properties in the Department's tax credit portfolio. The Department has conducted on-site compliance reviews on five (5) of these properties. Based upon those reviews, two properties have non-compliance scores of eleven (11) each, which is below the material non-compliance threshold score of 30 points.~~

#### **ISSUANCE TEAM & ADVISORS:**

Related Capital (Equity Provider)  
Wells Fargo Bank, Texas, NA, (Trustee)  
Vinson & Elkins L.L.P. (Bond Counsel)  
Dain Rauscher, Inc. (Financial Advisor)  
McCall, Parkhurst & Horton, L.L.P. (Issuer Disclosure Counsel)  
**First Union National Bank (Letter of Credit Provider)**

#### **BOND PURCHASER:**

The tax-exempt bonds will be purchased by Charter Mac Equity Issuer Trust. Charter Municipal Mortgage Acceptance Company will purchase the taxable bonds. The purchaser and any subsequent purchaser will be required to sign the Department's standard traveling investor letter.

#### **PROJECT DESCRIPTION:**

The Project is a 236-unit apartment community to be constructed on a 15+/- acre site on Ledbetter Road at Pemberton Hill Road in Dallas County, Dallas, Texas. The site density will be 15.7 dwelling units per acre. The topography of the site is generally flat. The Project will include a total of thirteen (13) two and three story wood-framed buildings with a total of 243,800 net rentable square feet and an average unit size of 1033 square feet. The project will include a small laundry/maintenance building as well as a centrally located community building containing approximately 5,470 square feet primarily for offices, leasing, social activities, and community services. The community building will also contain a parlor with television and fireplace, a residential kitchen, a foyer restrooms, and public telephone and vending areas. On site amenities will include a swimming pool, a children's play area and picnic areas interspersed among the buildings. The perimeter of the apartment complex will be fenced and will have controlled access security gates with parking provided for 236 carports, and 249 open spaces.

## Hillside Apartments

### EXHIBIT 8

<u>Units</u>	<u>Unit Type</u>	<u>Square</u>
<u>Feet</u>		
132	2-Bedrooms/2-Baths	950
84	3-Bedrooms/2-Baths	1100
20	4- Bedrooms/2-Baths	1300

#### **SET-ASIDE UNITS:**

For Bond covenant purposes, at least forty (40%) of the residential units in the development are both rent restricted and occupied by persons or families earning not more than sixty percent (60%) of the area median income. Five percent (5%) of the units in each project will be set aside on a priority basis for persons with special needs. For Tax Credit purposes, the Borrower will set-aside 100% of the units at sixty percent (60%) of the area median income.

#### **RENT CAPS:**

For Bond covenant purposes, the rental rates on 100% of the units will be restricted to a maximum rent that will not exceed thirty percent (30%) of the income, adjusted for family size, for fifty percent (50%) of the area median income.

#### **TENANT SERVICES:**

[Undetermined.] Borrower will be required to provide a Tenant Services Plan based on the tenant profile upon lease-up that conforms to the Department's program guidelines.

#### **DEPARTMENT ORIGINATION FEES:**

\$1,000 Pre-Application Fee (Paid).  
\$10,000 Application Fee (Paid).  
\$64,500 Issuance Fee (.50% of the bond amount paid at closing).

#### **DEPARTMENT ANNUAL FEES:**

Bond Administration = 0.10% of bond amount (\$12,900 for 1<sup>st</sup> year).  
Compliance Fee = \$5,900 (\$25/unit), adjusted annually for CPI.

*(Department's annual fees may be adjusted, including deferral, to accommodate underwriting criteria and Project cash flow.)*

#### **ASSET OVERSIGHT FEE:**

\$25/unit/year (\$5,900) to TSAHC or assigns, adjusted annually for CPI.

#### **TAX CREDITS:**

The Borrower has applied to the Department to receive a Determination Notice for the 4% tax credit that accompanies the private-activity bond allocation. The tax credit equates to \$904,814 per annum and represents equity for the transaction. To capitalize on the tax credit, the Borrower will sell a substantial portion of the limited partnership, typically 99%, to raise equity funds for the project. Although a tax credit sale has not been finalized, the Borrower anticipates raising

## Hillside Apartments

### EXHIBIT 8

approximately \$7,329,000 of equity for the transaction.

#### **BOND STRUCTURE:**

The Bonds are proposed to be issued under a Trust Indenture (the "Trust Indenture") that will describe the fundamental structure of the Bonds, permitted uses of Bond proceeds and procedures for the administration, investment and disbursement of Bond proceeds and program revenues.

The Bonds will be privately placed with the Bond Purchaser, and will mature over a term of 40 years for the Tax-Exempt Bonds and 10.33 years for the Taxable Bonds. During the construction and lease-up period, the Bonds will pay as to interest only. The Bonds will be secured by a first lien on the Project.

**During the Construction Phase, the Letter of Credit Provider will provide a Letter of Credit to the benefit of the Bond Purchaser to secure the Borrower's reimbursement obligations during the construction phase. The Borrower's reimbursement obligations to the Letter of Credit Provider will be secured by a 2nd lien mortgage on the property and certain related obligations to the Trustee on behalf of the Bond Purchaser. Upon satisfaction of certain Conversion Requirements, the Mortgage Loan will convert from the Construction Phase to the Permanent Phase. The Bond Purchaser will return the Letter of Credit to the Interim Lender Letter of Credit Provider upon completion of construction.**

The Bonds are mortgage revenue bonds and, as such, create no potential liability for the general revenue fund or any other state fund. The Act provides that the Department's revenue bonds are solely obligations of the Department, and do not create an obligation, debt, or liability of the State of Texas or a pledge or loan of the faith, credit or taxing power of the State of Texas. The only funds pledged by the Department to the payment of the Bonds are the revenues from the financing carried out through the issuance of the Bonds.

#### **BOND INTEREST RATES:**

The interest rate on the Tax Exempt Bonds will be 7.90% until December 1, 2003 and then shall be set at 7.20% thereafter. The Taxable Bonds will be set at 9.25% fixed until fully amortized after approximately 10.33 years.

#### **CREDIT ENHANCEMENT:**

The bonds will be unrated with no credit enhancement.

#### **FORM OF BONDS:**

The Bonds will be issued in book entry form and in denominations of \$100,000 or any integral multiple of \$5,000 in excess of \$100,000.

#### **MATURITY/SOURCES & METHODS OF REPAYMENT:**

The Bonds will bear interest at a fixed rate until maturity and

## Hillside Apartments

### EXHIBIT 8

will be payable monthly. During the construction phase, the Bonds will be payable as to interest only, from an initial deposit at closing to the Capitalized Interest Account of the Construction Fund, earnings derived from amounts held on deposit in an investment agreement, and other funds deposited to the Revenue Fund specifically for capitalized interest during a portion of the construction phase. After conversion to the permanent phase, the Bonds will be paid from revenues earned from the Mortgage Loan.

#### **TERMS OF THE MORTGAGE LOAN:**

The Mortgage Loan is a non-recourse obligation of the Owner (which means, subject to certain exceptions, the Owner is not liable for the payment thereof beyond the amount realized from the pledged security) providing for monthly payments of interest during the construction phase and level monthly payments of principal and interest upon conversion to the permanent phase. A Deed of Trust and related documents convey the Owner's interest in the project to secure the payment of the Mortgage Loan.

#### **REDEMPTION OF BONDS PRIOR TO MATURITY:**

The Bonds are subject to redemption under any of the following circumstances:

##### **Mandatory Redemption:**

- (a) Under certain circumstances, the Bonds are subject to mandatory redemption in whole or in part, in the event of:
  - (1) the project has not achieved Stabilization within twenty-four (24) months from the end of the Construction Period; or,
  - (2) damage to or destruction or condemnation of the Project to the extent that Insurance Proceeds or a Condemnation Award in connection with the Project are deposited in the Revenue Fund and are not to be used to repair or restore the Project.
- (b) A portion of the Bonds are subject to mandatory redemption from proceeds remaining in the Construction Fund that are not needed to complete the project which are not qualified project costs.
- (c) The Bonds are subject to a mandatory redemption in part according to the dates and amounts indicated on the Mandatory Sinking Fund Schedule.
- (d) The Bonds are subject to redemption, in whole or in part, following the occurrence of an Event of Default under the Facility Agreement.



## Hillside Apartments

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- (e) The Bonds are subject to mandatory redemption upon the determination of Taxability if the Owner of a Tax-Exempt Bond presents his Tax-Exempt bond or Bonds for redemption, on any date selected by such Owner, specified in a notice in writing delivered to the Borrower and the Issuer at least thirty (20) days prior to such date.
- (f) The Bonds are subject to mandatory redemption, in whole, at the option of the Owner of all the Bonds, at any time on or after December 1, 2018, the seventeenth (17th) anniversary of the Closing Date, if the Owners elect redemption and provide a 180 day written notice to the Issuer, Trustee and Borrower.

#### **Optional Redemption:**

- (a) The Bonds are subject to redemption, in whole, at the option of the Borrower, at any time on or after December 1, 2018, based upon an optional prepayment of the Mortgage Loan by the Borrower.

#### **FUNDS AND ACCOUNTS/FUNDS ADMINISTRATION:**

Under the Trust Indenture Wells Fargo Bank Texas N.A. (the "Trustee") will serve as registrar and authenticating agent for the Bonds, trustee of certain of the funds created under the Trust Indenture (described below), and will have responsibility for a number of loan administration and monitoring functions.

Moneys on deposit in Trust Indenture funds are required to be invested in eligible investments prescribed in the Trust Indenture until needed for the purposes for which they are held.

The Trust Indenture will create up to five (5) funds with the following general purposes:

1. Construction Fund – On the closing date, the proceeds of the Tax-exempt Bonds shall be deposited in the Construction Fund which consists of five (5) main accounts as follows:
  - (a) Loan Account (including two subaccounts, a Tax-Exempt Bond Proceeds Subaccount and a Taxable Bond Proceeds Subaccount) – represents the proceeds of a portion of the sale of the bonds. Tax-Exempt Bond proceeds are used to pay for Qualified Project Costs;
  - (b) Cost of Issuance Account – represents a portion of the initial equity contribution of the Borrower of which

## Hillside Apartments

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amounts for the payments of the costs of issuance are deposited and disbursed;

- (c) Insurance and Condemnation Proceeds Account – represents the total proceeds of insurance actually paid or payable by an insurance company pursuant to a claim made on the insurance policy;
  - (d) Equity Account – represents the balance of the initial equity contribution of the Borrower; and,
  - (e) Capitalized Interest Account – represents a portion of the initial equity contribution of the Borrower from which amounts may be transferred to the Revenue Fund in order to pay interest on the Bonds until the completion date of the project.
2. Replacement Reserve Fund – Fund into which amounts are held in reserve to cover replacement costs and ongoing maintenance to the project.
  3. Tax and Insurance Fund – moneys in the Tax and Insurance Fund are applied to the payment of real estate taxes and insurance premiums.
  4. Revenue Fund – Revenues from the project are deposited to the Revenue Fund and disbursed to sub-accounts for payment to the various funds according to the order designated under the Indenture: (1) to the payment of Interest on the Bonds; (2) to the payment of the principal or redemption price, including premium, if any on the Bonds and to the payment of Construction Administration Fees; (3) to the payment of any required deposit in the Tax and Insurance Fund; (4) to the payment of any required deposit in the Replacement Reserve Fund; (5) to the payment of the fees of the Trustee, the Servicer, the Issuer and the Asset Oversight Agent, if any, due and owing under the Loan Documents and the Indenture; (6) to the payment of any other amounts then due and owing under the Loan Documents; and (7) the remaining balance to the Borrower or such other party as may be legally entitled.
  5. Rebate Fund – Fund into which certain investment earnings are transferred that are required to be rebated periodically to the federal government to preserve the tax-exempt status of the Bonds. Amounts in this fund are held apart from the trust estate and are not available to pay debt service on the Bonds.

Essentially, all of the Tax-exempt bond proceeds will be

## Hillside Apartments

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deposited into the Construction Fund and disbursed therefrom during the Construction Phase (not to exceed 14 months) to finance the construction of the Project. Although costs of issuance of up to two percent (2%) of the principal amount of the Tax-exempt Bonds may be paid from Tax-exempt Bond proceeds, it is currently expected that all costs of issuance will be paid by an equity contribution of the Borrower.

#### **DEPARTMENT ADVISORS:**

The following advisors have been selected by the Department to perform the indicated tasks in connection with the issuance of the Bonds.

1. Bond Counsel - Vinson & Elkins L.L.P. ("V&E") was most recently selected to serve as the Department's bond counsel through a request for proposals ("RFP") issued by the Department in August 17, 2001. V&E has served in such capacity for all Department or Agency bond financings since 1980, when the firm was selected initially (also through an RFP process) to act as Agency bond counsel.
2. Bond Trustee Wells Fargo Bank Texas N.A. formerly Norwest Bank N.A. was selected as bond trustee by the Department pursuant to a request for proposal process in June 1996.
3. Financial Advisor - Dain Rauscher, Inc., formerly Rauscher Pierce Refsnes, was selected by the Department as the Department's financial advisor through a request for proposals process in September 1991.

#### **ATTORNEY GENERAL REVIEW OF BONDS:**

No preliminary written review of the Bonds by the Attorney General of Texas has yet been made. Department bonds, however, are subject to the approval of the Attorney General, and transcripts of proceedings with respect to the Bonds will be submitted for review and approval prior to the issuance of the Bonds.

## Hillside Apartments

### EXHIBIT 8

2001-016, Hillside  
Apartments

General Information		Principal Contact
Bond Amount:	\$12,500,000	TX Hillside Apartments, L.P
Program:	2001 Private Activity	Brian Potashnic
Bond Structure:		5910 N. Central Expressway
Purpose:	New Construction	Dallas, Texas 75206
Status:	Full Application	(214) 891-1402
A/O:	RFO	(214) 987-3507

Project(s)	City	Units
Hillside Apartments	Dallas	236

Project History - Timeline	Responsibility	Due Date	Status
BRB Reservation received	BRB	8/21/2001	Done
Complete Application due to TDHCA	Applicant	9/25/2001	Done
35 day reservation filing	V&E	9/25/2001	Done
Kick-of conference call	All	10/5/2001	Done
TEFRA notice in newspaper	V&E, Applicant	10/6/2001	Done
Deadline to submit TEFRA notice to Tx Reg		10/10/2001	Done
1st draft of Bond Documents	V&E	10/17/2001	Done
1st due diligence conference call	All	10/19/2001	Done
TEFRA notice published in Tx Reg	TDHCA, Tx Reg	10/19/2001	Done
TEFRA Signage on property	Applicant	10/22/2001	Done
2nd draft of Bond Documents	V&E	10/23/2001	Done
2nd due diligence conference call	All	10/29/2001	Done
TDHCA Board draft write-up due	TDHCA, Tx Reg	10/30/2001	Done
Final construction plans, appraisal, and all other due diligence materials are due to TDHCA	Applicant	10/30/2001	Done
All third party debt & equity commitments are due to TDHCA	Applicant	10/30/2001	Done
Notice of Intent to the BRB	TDHCA	11/1/2001	Done
3rd draft of Bond Documents	V&E	10/1/2001	Done
TDHCA underwriting due	TDHCA	11/5/2001	Scheduled
Board final write-ups due	TDHCA	11/5/2001	Scheduled
Bond Review Board application due	TDHCA	11/6/2001	Scheduled
TEFRA Hearing (6:00pm)	TDHCA, Applicant	11/6/2001	Scheduled
TDHCA Board Meeting agenda published	TDHCA	11/6/2001	Scheduled
File transcripts with Attorney General	V&E	11/12/2001	Scheduled
3rd due diligence conference call	All	11/12/2001	Scheduled
BRB Planning session	TDHCA, V&E, FA, Applicant	11/13/2001	Scheduled
TDHCA Board Meeting	TDHCA, V&E, FA, Applicant	11/14/2001	Scheduled
Bond Review Board Meeting	TDHCA, V&E, FA, Applicant	11/29/2001	Scheduled
Circulate draft of closing memorandum	Underwriter	12/3/2001	Scheduled
Price Bonds	Underwriter	12/6/2001	Scheduled
Circulate Closing Memorandum	Underwriter	12/12/2001	Scheduled

**Hillside Apartments**

**EXHIBIT 8**

Final Building permits due to TDHCA	Applicant	12/13/2001 Scheduled
Pre-close Bonds	All	12/13/2001 Scheduled
Close Bonds	All	12/14/2001 Scheduled
Reservation Expiration Date	BRB	12/19/2001 Scheduled

## Hillside Apartments

### EXHIBIT 8

Bond Proceeds, Series 2001A Bonds (Tax-Exempt)	\$ 12,500,000
Bond Proceeds, Series 2001B Bonds (Taxable)	400,000
Tax Credit Proceeds	7,031,000
Interest Income	131,097
Deferred Developer's Fee	213,172
<b>Total Sources</b>	<u><u>\$ 20,275,269</u></u>

#### Uses of Funds

Deposit to Mortgage Loan Fund (Construction funds)	\$ 15,690,346
Capitalized Interest	1,308,238
Operating Reserve	300,000
Developer's Overhead & Fee	2,367,294
Costs of Issuance	
Direct Bond Related	194,625
Bond Purchaser Costs	176,500
Other Transaction Costs	38,266
Real Estate Closing Costs	200,000
<b>Total Uses</b>	<u><u>\$ 20,275,269</u></u>

#### Direct Bond Related

Department Issuance Fee (.50% of Issuance)	\$ 64,500
Department Application Fee	11,000
TDHCA Bond Compliance Fee (\$25 per unit)	5,900
Bond Counsel (Note 1)	60,000
Disclosure Counsel (Note 1)	2,500
Department Financial Advisor	30,000
Trustee's Fees (Note 1)	7,500
Trustee's Counsel (Note 1)	5,000
Attorney General Transcript Fee (\$1,250 per series, max. of 2 series)	2,500
Texas Bond Review Board Fee (.025% of Issuance)	3,225
TEFRA Hearing Publication Expenses	2,500
<b>Total Direct Bond Related</b>	<u><u>\$ 194,625</u></u>

#### Bond Purchase Costs

Loan Origination Fee (Charter Mac)	129,000
Due Diligence Cost (Charter Mac)	12,500
Legal Fees (Charter Mac)	35,000
<b>Total</b>	<u><u>\$ 176,500</u></u>

#### Other Transaction Costs

Letter of Credit Origination Fee	96,750
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## Hillside Apartments

### EXHIBIT 8

Letter of Credit Legal Fees	15,000
Tax Credit Application (\$15/u) and Determination Fee (4% annual tax cr.)	38,266
<b>Total</b>	<b>\$ 150,016</b>

<b>Real Estate Closing Costs</b>	
Title & Recording (Const. & Perm.)	100,000
Property Taxes	50,000
Borrower Counsel	50,000
<b>Total Real Estate Costs</b>	<b>\$ 200,000</b>

**Estimated Total Costs of Issuance** \$ 721,141

Costs of issuance of up to two percent (2%) of the principal amount of the Bonds may be paid from Bond proceeds. Costs of issuance in excess of such two percent must be paid by an equity contribution of the Borrower.

Note 1: These estimates do not include direct, out-of-pocket expenses (i.e. travel). Actual Bond Counsel and Disclosure Counsel are based on an hourly rate and the above estimate does not include on-going administrative fees.

## Hillside Apartments

### EXHIBIT 8

LIHTC Allocation Calculation - Hillside Apartments, Dallas, LIHTC 01406/MFB 2001-016

CATEGORY	APPLICANT'S TOTAL AMOUNTS	TDHCA TOTAL AMOUNTS	APPLICANT'S REHAB/NEW ELIGIBLE BASIS	TDHCA REHAB/NEW ELIGIBLE
<b>(1) Acquisition Cost</b>				
Purchase of land	\$900,000	\$900,000		
Purchase of buildings	\$0	\$0		
<b>(2) Rehabilitation/New Construction Cost</b>				
On-site work	\$1,380,600	\$1,380,600	\$1,380,600	\$1,380,600
Off-site improvements	\$0	\$0		
<b>(3) Construction Hard Costs</b>				
New structures/rehabilitation hard costs	\$10,489,600	\$9,943,302	\$10,489,600	\$9,943,302
<b>(4) Contractor Fees &amp; General Requirements</b>				
Contractor overhead	\$240,472	\$226,478	\$237,404	\$226,478
Contractor profit	\$721,416	\$679,434	\$712,212	\$679,434
General requirements	\$721,416	\$679,434	\$712,212	\$679,434
<b>(5) Contingencies</b>	<b>\$736,416</b>	<b>\$566,195</b>	<b>\$593,510</b>	<b>\$566,195</b>
<b>(6) Eligible Indirect Fees</b>	<b>\$576,550</b>	<b>\$576,550</b>	<b>\$576,550</b>	<b>\$576,550</b>
<b>(7) Eligible Financing Fees</b>	<b>\$1,486,672</b>	<b>\$1,486,672</b>	<b>\$1,486,672</b>	<b>\$1,486,672</b>
<b>(8) All Ineligible Costs</b>	<b>\$627,502</b>	<b>\$627,502</b>		
<b>(9) Developer Fees</b>			<b>\$2,428,314</b>	<b>\$0</b>
Developer overhead	\$0	\$310,773	\$0	\$310,773
Developer fee	\$2,803,182	\$2,020,027	\$0	\$2,020,027
<b>(10) Development Reserves</b>	<b>\$300,000</b>	<b>\$300,000</b>		
<b>TOTAL DEVELOPMENT COSTS</b>	<b>\$20,983,826</b>	<b>\$19,696,967</b>	<b>\$18,617,074</b>	<b>\$17,869,465</b>

<b>Deduct from Basis:</b>				
All grant proceeds used to finance costs in eligible basis			\$0	\$0
B.M.R. loans used to finance cost in eligible basis			\$0	\$0
Non-qualified non-recourse financing			\$0	\$0
Non-qualified portion of higher quality units [42(d)(3)]			\$0	\$0
Historic Credits (on residential portion only)			\$0	\$0
<b>TOTAL ELIGIBLE BASIS</b>			<b>\$18,617,074</b>	<b>\$17,869,465</b>
High Cost Area Adjustment			130%	130%
<b>TOTAL ADJUSTED BASIS</b>			<b>\$24,202,196</b>	<b>\$23,230,305</b>
Applicable Fraction			100%	100%
<b>TOTAL QUALIFIED BASIS</b>			<b>\$24,202,196</b>	<b>\$23,230,305</b>
Applicable Percentage			3.69%	3.69%
<b>TOTAL AMOUNT OF TAX CREDITS</b>			<b>\$893,061</b>	<b>\$857,196</b>
	Syndication Proceeds	0.8099	\$7,233,070	\$6,942,611



## Hillside Apartments

### EXHIBIT 8

# RESULTS & ANALYSIS:

**Tenants** in the 60% AMFI bracket will **save \$136 to \$253** per month (leaving 4.7% to 6.8% more of their monthly income for food, child care and other living expenses).  
This is a monthly savings off the market rents of **17.0% to 23.0%**.

#### PROJECT INFORMATION

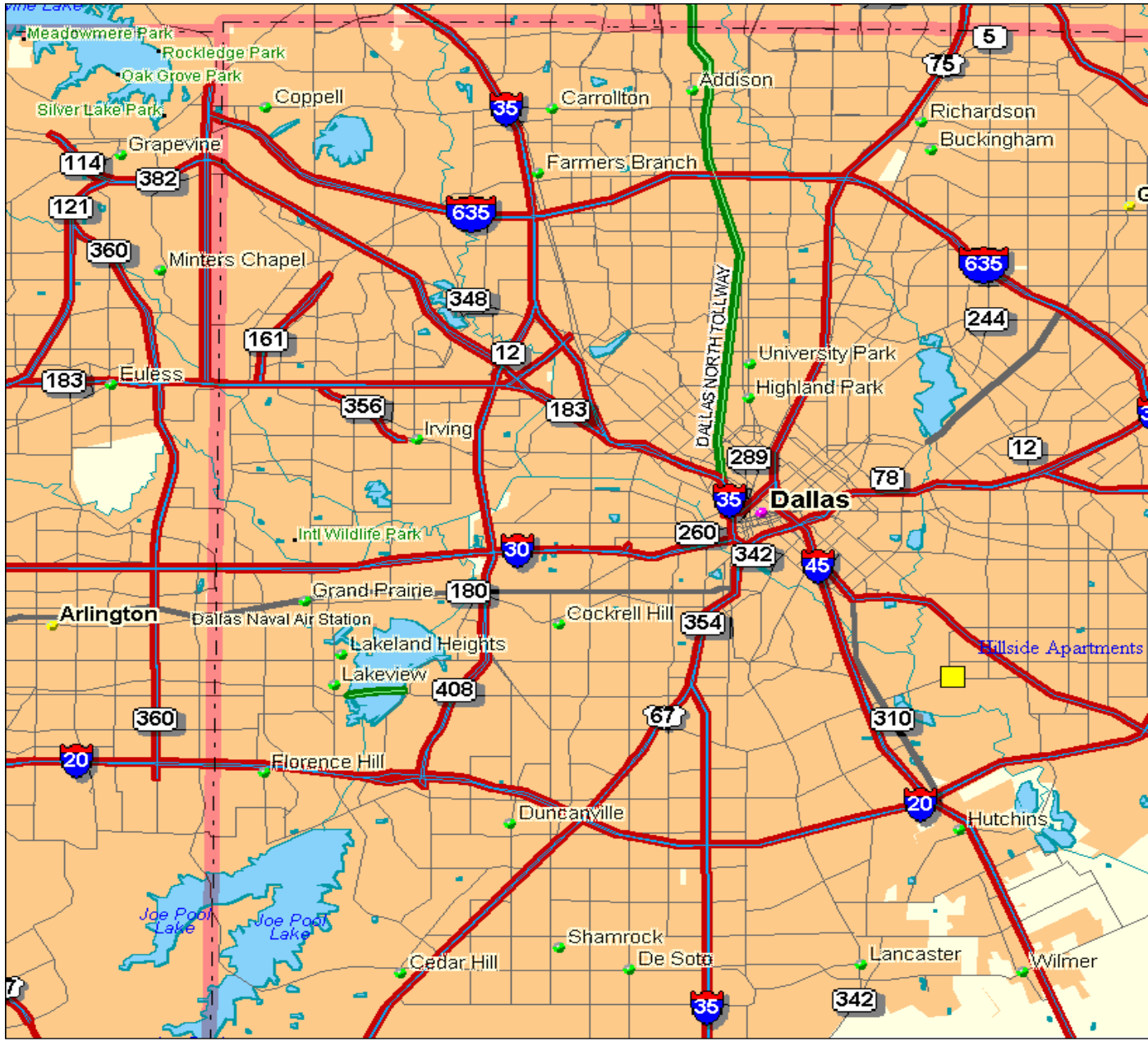
	<b>Unit Mix</b>		
Unit Description	2-Bedroom	3-Bedroom	4-Bedroom
Square Footage	950	1,100	1,300
Rents if Offered at Market Rates*	\$800	\$925	\$1,100
Rent per Square Foot	\$0.84	\$0.84	\$0.85

SAVINGS ANALYSIS FOR 60% AMFI GROUPING				
Rent Cap for 50% AMFI Set-Aside	\$664	\$766	\$847	
<b>Monthly Savings for Tenant</b>	<b>\$136</b>	<b>\$159</b>	<b>\$253</b>	
Maximum Monthly Income - 60% AMFI	\$2,900	\$3,220	\$3,735	
<b>Monthly Savings as % of Monthly Income</b>	<b>4.7%</b>	<b>4.9%</b>	<b>6.8%</b>	
<b>% DISCOUNT OFF MONTHLY RENT</b>	<b>17.0%</b>	<b>17.2%</b>	<b>23.0%</b>	

\* A Market Study of Hillside Apartments dated September 24, 2001 by Butler Burgher, LLC of Dallas, Texas for TX Hillside Apartments, L.P. and TDHC

# Hillside Apartments

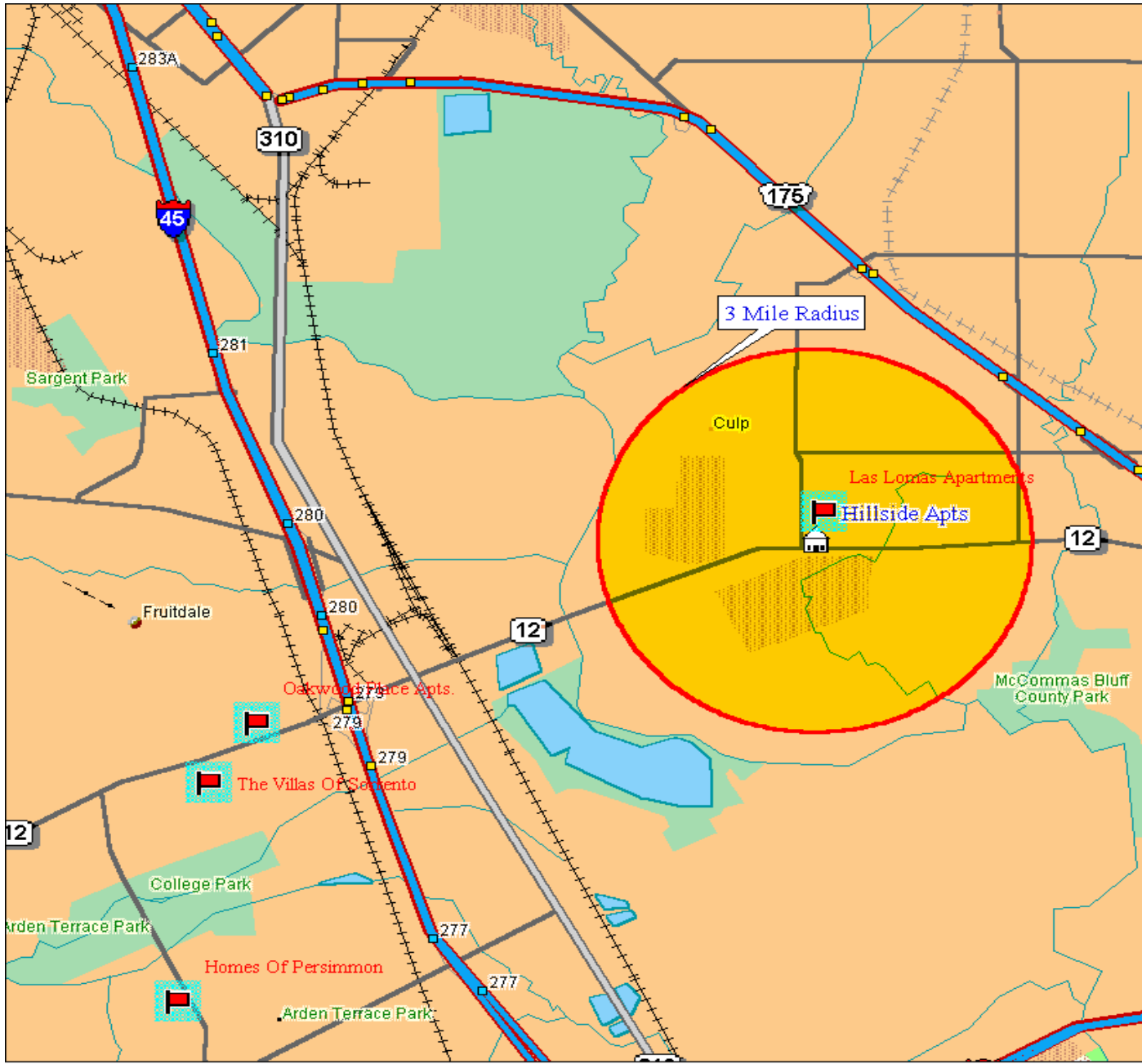
## EXHIBIT 8



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# Hillside Apartments

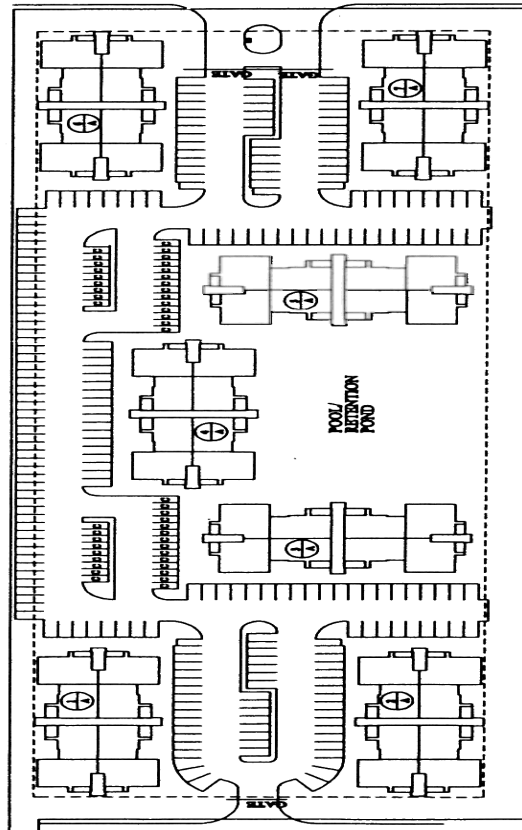
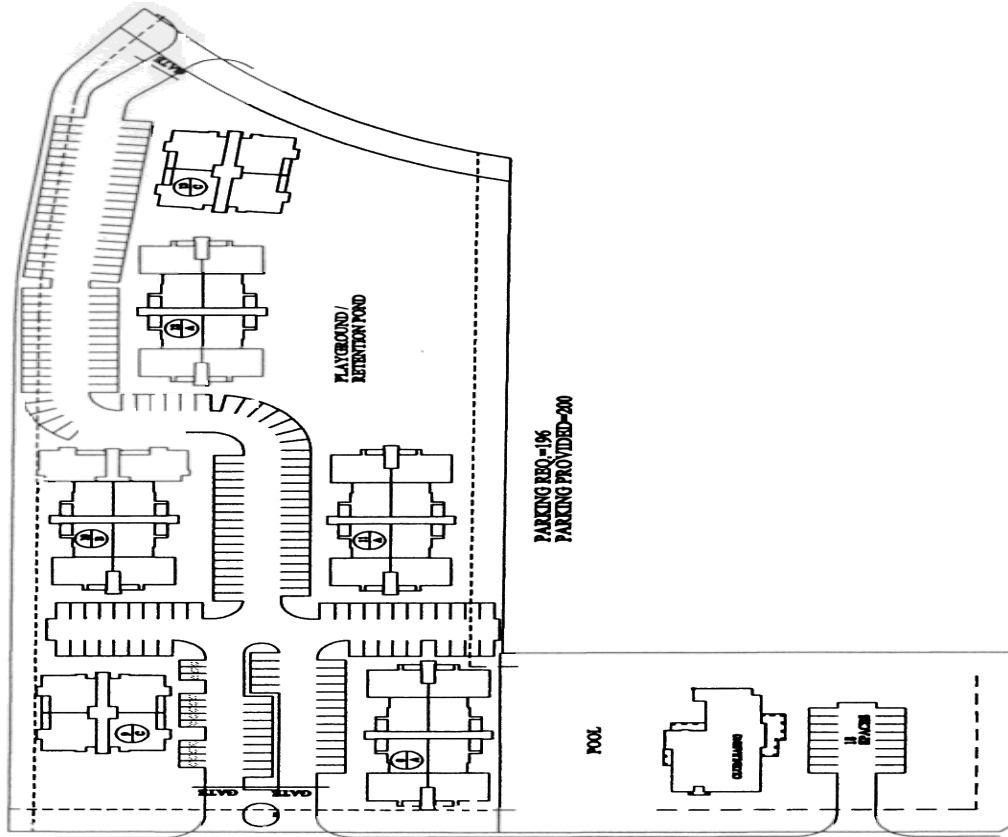
## EXHIBIT 8



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Scale: 1 = 40,000 Feet. Layer: 11-4 Status: WGS84

Hillside Apartments

EXHIBIT 8



PARKING REQ.-280  
PARKING PROVIDED-285

SITE PLAN - HILLSIDE

Hillside Apartments

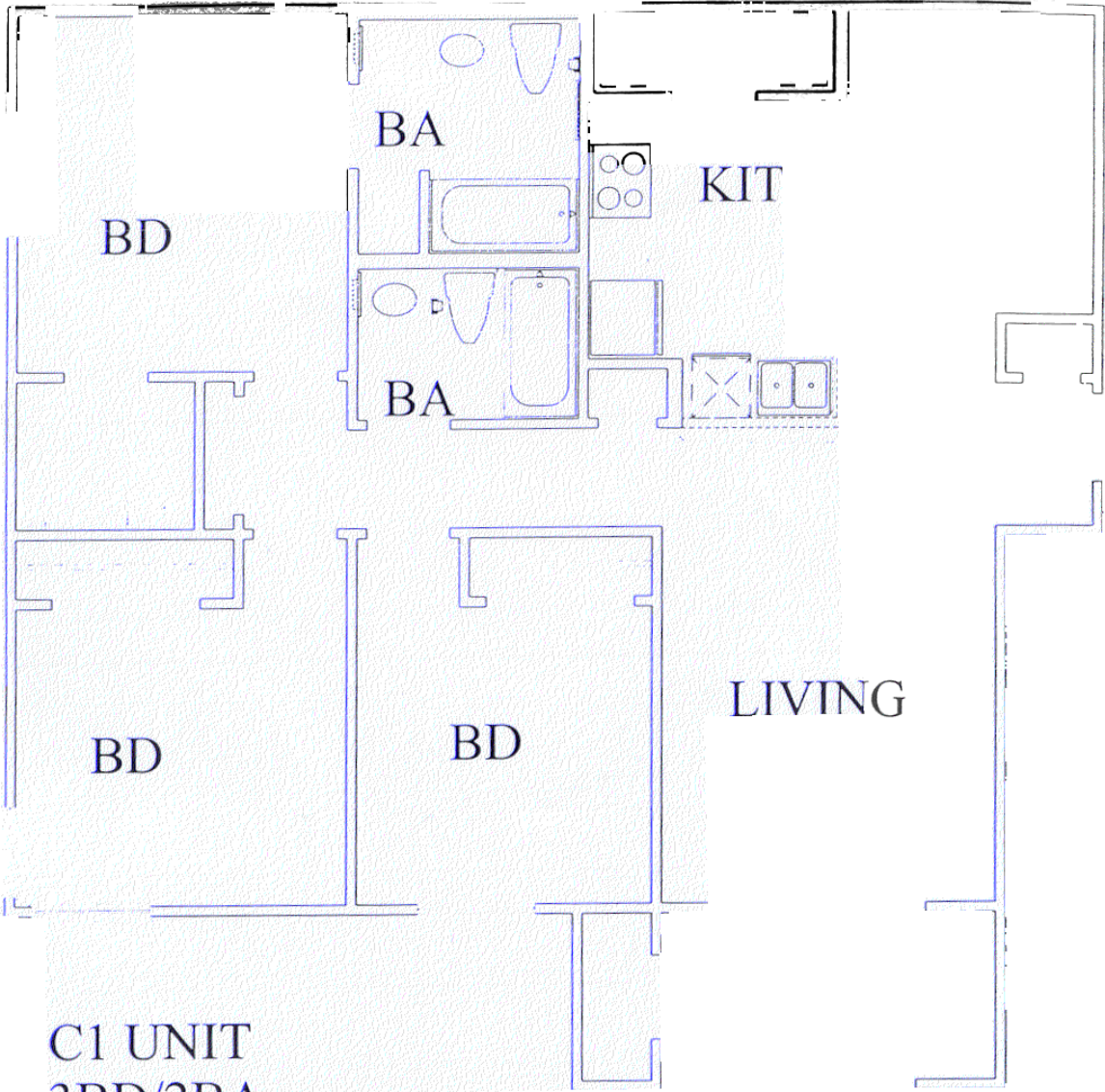
EXHIBIT 8



B1 UNIT  
2 BR/2BA  
950 SF  
3/16"= 1'-0"

Hillside Apartments

EXHIBIT 8

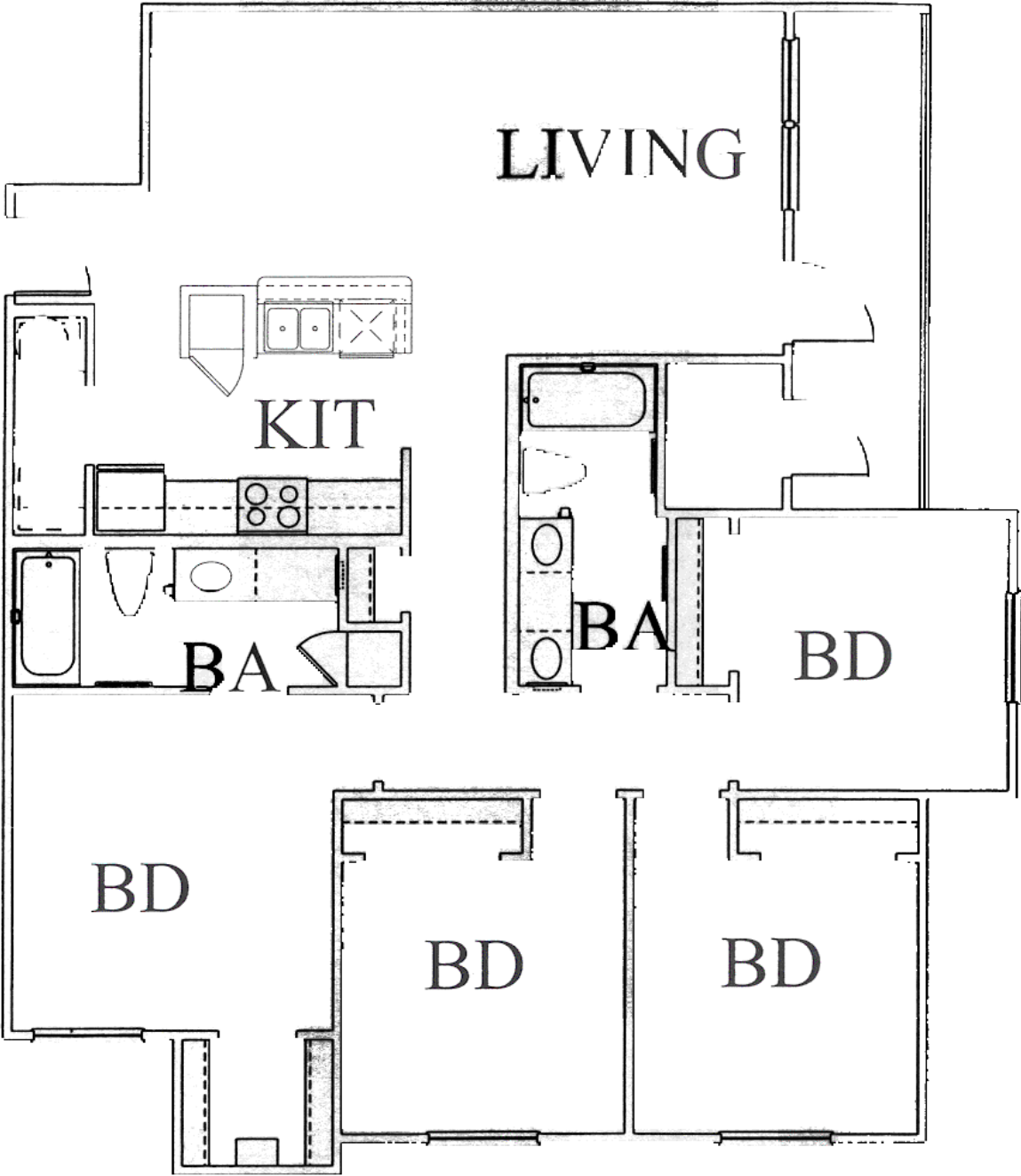


C1 UNIT  
3BD/2BA

100 SF  
3/ 6 .0

Hillside Apartments

EXHIBIT 8



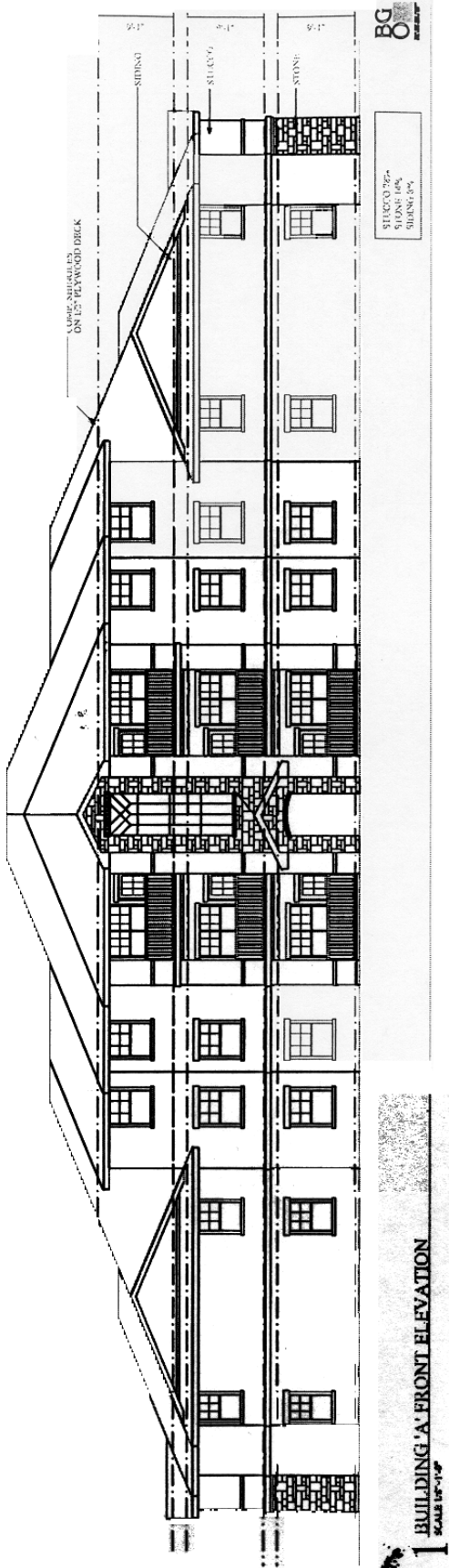
4 BD/2 BA

1300 SF

3/16 1 0

# Hillside Apartments

## EXHIBIT 8



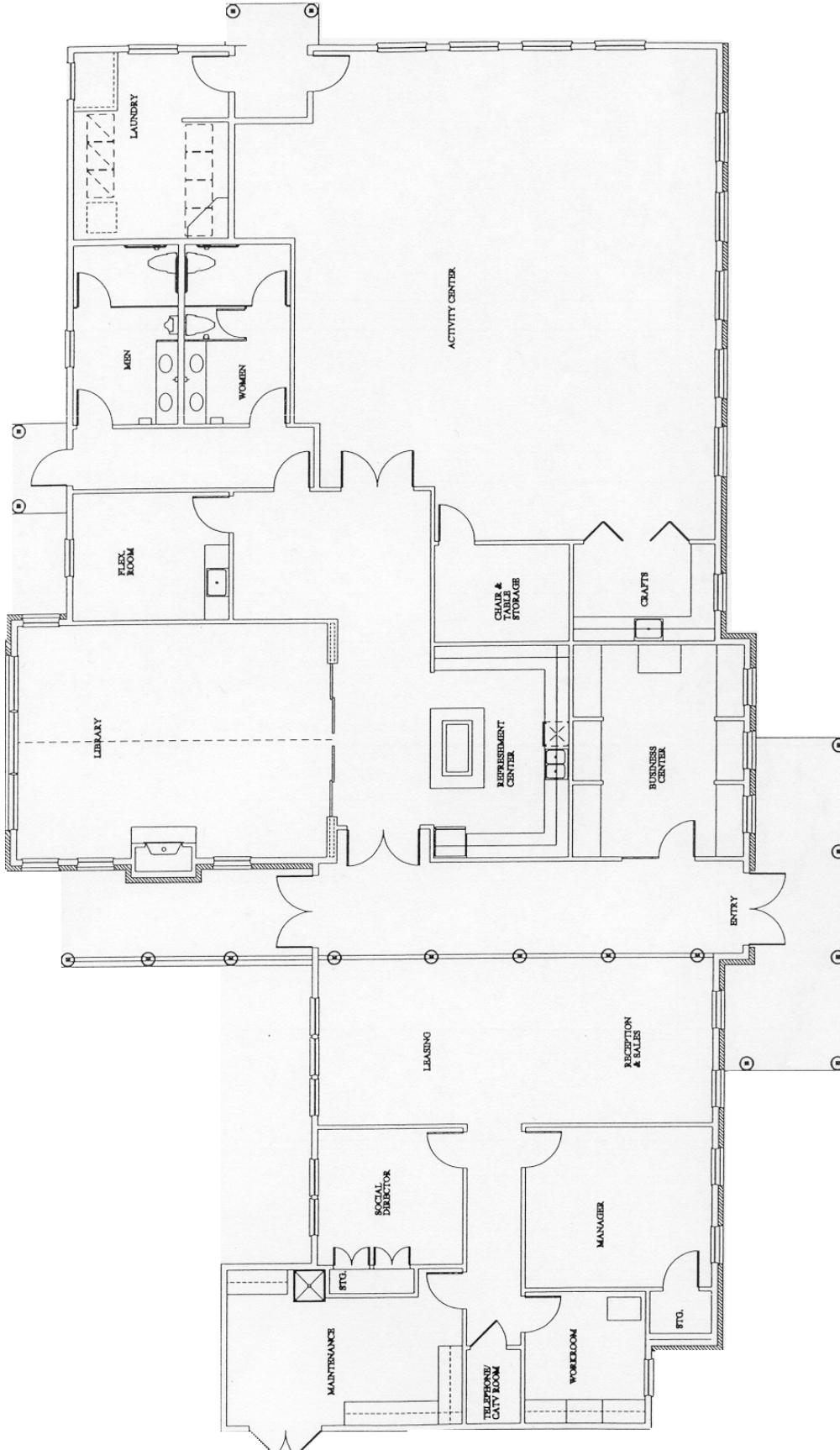


**Hillside Apartments**

**EXHIBIT 8**

# Hillside Apartments

## EXHIBIT 8



**Hillside Apartments**

**EXHIBIT 8**

## Hillside Apartments

### EXHIBIT 8

#### Participation of Women and Minorities - Department Advisors

##### A. Bond Counsel

Vinson & Elkins L.L.P. ("V&E"). V&E pursues a policy of recruiting and hiring that encourages women and minorities to join the firm. V&E is committed to equal employment opportunities without regard to age, race, sex, color, religion, national origin or handicapped status, consistent with federal and state laws.

The minority and female representation within the firm as of March 28, 2000 was as follows:

<b>Legal Personnel</b>
------------------------

Number of Attorneys Employed:	866
Male	610
Female	256
Number of Minority Attorneys Employed:	69
Black	23
Hispanic	29
Asian	16
Native American	1
Number of Minority Law Clerks and/or Paralegals Employed:	15
Black	4
Hispanic	8
Asian	3
Native American	0
Number of Women Law Clerks and/or Paralegals Employed:	120
Number of Law Clerks and/or Paralegals Employed:	147
Number of Minority Legal Personnel Hired During the Last 12 Months:	
Attorneys	30
Law Clerks/Paralegals	4

<b>Non-Legal Personnel</b>
----------------------------

Number of Non-Legal Personnel Employed:	1086
Male	202
Female	884
Black	144
Hispanic	133
Asian	47
Native American	2

## Hillside Apartments

### EXHIBIT 8

#### B. Financial Advisor

Dain Rauscher, Inc. It is the policy of Dain Rauscher, Inc. to provide equal opportunity to all persons without regard to race, color, national origin, religion, political affiliation, disability, marital status, sex or age. This policy will affect all employment practices, including (but not limited to) recruiting selection, placement, transfer, promotion, training, compensation, other benefits, layoff and recall, terminations, and in all company sponsored activities.

It is the responsibility of each member of management at every level throughout Dain Rauscher, Inc. to ensure the implementation of this policy and support it through positive leadership and personal example.

It is the responsibility of each employee to create an atmosphere on the job which is conducive to this policy.

Current information regarding Dain Rauscher, Inc.'s women and minority employment status is shown on the following page.

## Hillside Apartments

### EXHIBIT 8

#### DAIN RAUSCHER, INC. - EQUAL EMPLOYMENT OPPORTUNITY NUMBER OF EMPLOYEES

As of January 2, 2001

JOB CATEGORIES	TOTAL EMPLOYEES	TOTAL BY GENDER		WHITE		AMERICAN INDIAN		BLACK		HISPANIC		ASIAN OR PACIFIC ISLANDER		UNIDENTIFIED AT THIS TIME	
		Male	Female	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female
Officials and Managers	536	311	225	258	191	1	0	6	3	1	2	3	2	2	1
Professionals	909	593	315	535	275	0	1	8	10	6	10	32	17	12	2
Technicians	31	24	7	20	5	0	0	1	1	1	0	1	0	1	1
Sales Workers	1,280	1,047	233	1,009	227	1	0	6	0	6	5	12	1	13	0
Non Exempt	1,263	260	1,002	209	868	2	7	25	51	4	32	11	19	9	25
<b>TOTAL</b>	<b>4,019</b>	<b>2,235</b>	<b>1,782</b>	<b>1,822</b>	<b>1,566</b>	<b>4</b>	<b>8</b>	<b>46</b>	<b>65</b>	<b>18</b>	<b>49</b>	<b>59</b>	<b>39</b>	<b>37</b>	<b>29</b>

## **Hillside Apartments**

### **EXHIBIT 8**

#### **C. Disclosure Counsel - McCall, Parkhurst & Horton, L.L.P**

##### **AFFIRMATIVE ACTION**

McCall, Parkhurst & Horton L.L.P. maintains employment practices that are nondiscriminatory. In addition, the firm is committed to taking affirmative action to assure equal employment opportunities to all groups within the work force. These affirmative action goals relate to all aspects of the employment process including recruitment, retention as an employee, training and job description, compensation and advancement. The firm will continue to implement and maintain its affirmative action program to mirror the representation in the work force based on race, color and gender, with particular emphasis on employees for legal positions within the firm.

## Hillside Apartments

### EXHIBIT 8

#### DISCLOSURE COUNSEL - MCCALL, PARKHURST & HORTON, L.L.P BREAKDOWN OF EMPLOYMENT AS OF MARCH 1, 2001.

##### Legal Personnel

Number of Attorneys:	18
Male Attorneys	16
Female Attorneys	2
Number of Minority Attorneys:	
African American Attorneys	1
Hispanic Attorneys	2

##### Non-Legal Personnel

Number of Law Clerks and/or Paralegals employed:	2
Male Law Clerks/Paralegals	0
Female Law Clerks/Paralegals	2
Number of Support Personnel (excluding Law Clerks and Paralegals) employed:	20
Male	2
Female	18
African American	1
Hispanic	4
Other Minority (Native American)	1

McCall, Parkhurst & Horton L.L.P. provides legal representation in the field of public finance. Due to recent actions by Congress and the current economy of the State of Texas, the firm's personnel needs have diminished considerably in recent years. Since January, 1986, the firm has only added six attorneys, and two paralegals to its professional staff. The attorney positions were filled with two African American attorneys (one of whom left the firm to establish an investment banking firm), two Hispanic attorneys, and two female attorneys and the paralegal positions were filled with women. Of these six attorneys, five remain employed by the firm. The firm expects to make similar efforts to recruit women and minorities at such time as the need arises for additional attorneys and staff.

##### Affirmative Action Statement

McCall, Parkhurst & Horton L.L.P. will expend the firm's energy and resources in its efforts to recruit, hire and promote women and minorities in sufficient numbers to meet or exceed their proportions in the Texas work force.



## Hillside Apartments

### EXHIBIT 8

#### D. WELLS FARGO BANK TEXAS, NA, CORPORATE TRUST SERVICES

Wells Fargo's Affirmative Action Policy: It is the policy of Wells Fargo Bank Texas, N.A. to afford equal opportunity to all individuals regardless of race, color, national origin, sex, religion, age, handicap or veteran status. The purpose of this policy directive is to reaffirm our established policy on equal employment opportunity.

Wells Fargo Bank Texas, N.A. is strongly committed to equality of opportunity as a basic goal of the American society. Therefore, the Bank will take affirmative action to ensure that we will: (1) recruit, hire, train, and promote persons in all job titles without regard to race, color, national origin, sex, religion, age, handicap or veteran status; (2) base decisions on employment so as to further the principal of equal employment opportunity; (3) ensure that promotion decisions are in accord with principals of equal employment opportunity by imposing only valid requirements for promotional opportunities; and (4) ensure that all personnel actions such as compensation, benefits, transfers, layoffs, return from layoff, Bank-sponsored training, education, tuition assistance, or social or recreational programs will be administered without regard to race, color, national origin, religion, age, sex, handicap or veteran status.

The successful achievement of a non-discriminatory employment program requires a maximum of cooperation between management and employees. In fulfilling its part in this cooperative effort, management is obliged to lead the way by establishing and implementing affirmative procedures and practices which will ensure our objectives; namely equal employment opportunity for all.

**Reed Road South Apartments**

**EXHIBIT 8  
WELLS FARGO BANK TEXAS, NA, CORPORATE TRUST SERVICES  
EQUAL EMPLOYMENT OPPORTUNITY  
NUMBER OF EMPLOYEES  
AS OF DECEMBER 2000**

<b>Job Categories</b>	<b>Employees</b>	<b>Male</b>					<b>Female</b>			
		<b>White</b>	<b>Black</b>	<b>Hispanic</b>	<b>Asian</b>	<b>Indian</b>	<b>White</b>	<b>Black</b>	<b>Hispanic</b>	<b>As</b>
Officials and Managers	68	30	1	1	1	0	32	2	1	
Professionals	277	115	7	3	12	0	119	12	4	
Technicians	1	1	0	0	0	0	0	0	0	
Sales Workers	10	7	0	0	0	0	3	0	0	
Office and Clerical	342	76	25	4	11	1	135	56	6	
Operatives (Semi Skilled)	0	0	0	0	0	0	0	0	0	
<b>Total</b>	<b>698</b>	<b>229</b>	<b>33</b>	<b>8</b>	<b>24</b>	<b>1</b>	<b>289</b>	<b>70</b>	<b>11</b>	

**Hillside Apartments**

**EXHIBIT 8**

**Public/TEFRA Hearing**

Public Hearing scheduled for November 6, 2001 at 6:00 at the City  
Dallas Public Library, Dallas West meeting room, 1515 Young  
Street, Dallas, Texas 75201

Transcript of the Public Hearing will be provided as soon as available.

# Hillside Apartments

## EXHIBIT 8 Compliance Status Summary

ID# 01406  
 Project Name \_\_\_\_\_  
 Address 6100 Block of Ledbetter @ Pemberton Hills Rd  
 City Dallas, Texas 75216

Type Funding  
 LIHTC 9%  
 LIHTC 4%  
 BOND  
 HOME  
 HTF  
 HSG. INFRAS.

Owner Name TX Hillside Apartments, L.P.  
 Contact Brian Potashnik

Development Team  
Brian Potashnik  
Bill Fisher JJ  
Cheryl Potashnik JJ

Role  
General Partner  
GP  
LP Board

Boxes marked if applicable	Type of Participation	Status(*)
<input checked="" type="checkbox"/>	Projects monitored by Dept. (compliance status report(s) attached)	Material Non-Compliance N/A <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes <input type="checkbox"/>
<input type="checkbox"/>	Projects monitored by other states (National Previous Participation and Background Certification(s) attached)	Issues of Compliance N/A <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/>
<input type="checkbox"/>	Audit Resolution (Summary of finding(s) attached if applicable)	Issues of Compliance N/A <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> <i>- Single Audit not required</i>
<input type="checkbox"/>	Program Monitoring (Summary of finding(s) attached if applicable)	Issues of Compliance N/A <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> <i>NONE</i>

Completed by: (signatures required from each compliance area)

Date

CMCM Sara Lynn Newman  
 CMAD Henry Tapia  
 CMPM Ralph Hernandez

10-23-2001  
10-24-2001  
10/23/2007

(\*) Status column will indicate: 1) Yes, if Material Non-compliance score is 30 or more points or unresolved compliance issues, 2) No, if no compliance issues, 3) N/A, if a review has not been conducted or the results are pending or another state failed to respond.

## Hillside Apartments

### EXHIBIT 8

<b>Properties Monitored by the Department</b>		
<i>Application ID # <u>01406</u></i>		
Hillside Apartments, Dallas		
<b>ID#</b>	<b>Project Name</b>	<b>Score</b>
70028/94032	Estrada Apartments	10
70037/94038	Melody Place Apartments	0
70039/95049	Melody Village Apartments	3
96014	Courtyards at Kirnwood	0
96015	The Birchwood Apartments	14
98002	The Village at Johnson Creek	3
98032	Villas at Redmond	1
00014T	The Oaks at Hampton	N/A
00029T	Parks at Westmoreland	N/A
01409	Bluffview	N/A
01408	Knollwood Villas	N/A

## Hillside Apartments

### EXHIBIT 8

#### RESOLUTION NO. 01-50

RESOLUTION AUTHORIZING AND APPROVING THE ISSUANCE, SALE AND DELIVERY OF MULTIFAMILY HOUSING MORTGAGE REVENUE BONDS (HILLSIDE APARTMENTS) SERIES 2001A, AND TAXABLE MULTIFAMILY HOUSING MORTGAGE REVENUE BONDS (HILLSIDE APARTMENTS) SERIES 2001B; APPROVING THE FORM AND SUBSTANCE AND AUTHORIZING THE EXECUTION AND DELIVERY OF DOCUMENTS AND INSTRUMENTS PERTAINING THERETO; AUTHORIZING AND RATIFYING OTHER ACTIONS AND DOCUMENTS; AND CONTAINING OTHER PROVISIONS RELATING TO THE SUBJECT

WHEREAS, the Texas Department of Housing and Community Affairs (the "Department") has been duly created and organized pursuant to and in accordance with the provisions of Chapter 2306, Texas Government Code, as amended (the "Act"), for the purpose, among others, of providing a means of financing the costs of residential ownership, development and rehabilitation that will provide decent, safe, and affordable living environments for individuals and families of low and very low income (as defined in the Act) and families of moderate income (as described in the Act and determined by the Governing Board of the Department (the "Board") from time to time); and

WHEREAS, the Act authorizes the Department: (a) to make mortgage loans to housing sponsors to provide financing for multifamily residential rental housing in the State of Texas (the "State") intended to be occupied by individuals and families of low and very low income and families of moderate income, as determined by the Department; (b) to issue its revenue bonds, for the purpose, among others, of obtaining funds to make such loans and provide financing, to establish necessary reserve funds and to pay administrative and other costs incurred in connection with the issuance of such bonds; and (c) to pledge all or any part of the revenues, receipts or resources of the Department, including the revenues and receipts to be received by the Department from such multi-family residential rental project loans, and to mortgage, pledge or grant security interests in such loans or other property of the Department in order to secure the payment of the principal or redemption price of and interest on such bonds; and

WHEREAS, the Board has determined to authorize the issuance of the Texas Department of Housing and Community Affairs Multifamily Housing Mortgage Revenue Bonds (Hillside Apartments) Series 2001A (the "Series A Bonds"), and Taxable Multifamily Housing Mortgage Revenue Bonds (Hillside Apartments) Series 2001B (the "Series B Bonds") (the Series A Bonds, and the Series B Bonds are referred to herein, collectively, as the "Bonds"), pursuant to and in accordance with the terms of a Trust Indenture (the "Indenture") by and between the Department and Wells Fargo Bank Texas, N.A. (the "Trustee"), for the purpose of obtaining funds to finance the Project (defined below), all under and in accordance with the Constitution and laws of the State of Texas; and

WHEREAS, the Department desires to use the proceeds of the Bonds to fund a mortgage loan to Tx Hillside Apartments, L.P., a Texas limited partnership (the "Borrower"), in order to finance the cost of acquisition, construction and equipping of a qualified residential rental project described on Exhibit A attached hereto (the "Project") located within the State of Texas required by the Act to be occupied by individuals and families of low and very low income and families of moderate income, as determined by the Department; and

WHEREAS, the Board, by resolution adopted on October 13, 2000, declared its intent to issue its revenue bonds to provide financing for the Project; and

WHEREAS, it is anticipated that the Department, the Borrower and the Trustee will execute and deliver a Loan Agreement (the "Loan Agreement") pursuant to which (i) the Department will agree to make a mortgage loan funded with the proceeds of the Bonds (the "Loan") to the Borrower to enable the Borrower to finance the cost of acquisition and construction of the Project and related costs, and (ii) the Borrower will execute and deliver to the Department a promissory note (the "Note") in an original principal amount equal to the original aggregate principal amount of the Bonds, and providing for payment of

## Hillside Apartments

### EXHIBIT 8

interest on such principal amount equal to the interest on the Bonds and to pay other costs described in the Agreement; and

WHEREAS, it is anticipated that the Note will be secured by a Deed of Trust and Security Agreement (with Power of Sale) (the "Deed of Trust") from the Borrower for the benefit of the Department and the Trustee; and

WHEREAS, the Department's interest in the Loan, including the Note and the Deed of Trust, will be assigned to the Trustee pursuant to an Assignment of Deed of Trust Documents and an Assignment of Note (collectively, the "Assignments") from the Department to the Trustee; and

WHEREAS, the Board has determined that the Department, the Borrower and Charter Municipal Mortgage Acceptance Company, a Delaware business trust, will execute a Bond Purchase Agreement (the "Purchase Agreement"), with respect to the sale of the Bonds; and

WHEREAS, the Board has determined that the Department, the Trustee and the Borrower will execute a Regulatory and Land Use Restriction Agreement (the "Regulatory Agreement"), with respect to the Project which will be filed of record in the real property records of Dallas County; and

WHEREAS, the Board has determined that the Department, the Trustee and First Union National Bank, a national banking association, will enter into an Intercreditor Agreement (the "Intercreditor Agreement") that will outline the interests of the various parties with respect to the Indenture, Loan Agreement, Deed of Trust and Regulatory Agreement; and

WHEREAS, the Board has examined proposed forms of the Indenture, the Loan Agreement, the Assignments, the Regulatory Agreement, the Purchase Agreement and the Intercreditor Agreement, all of which are attached to and comprise a part of this Resolution; has found the form and substance of such documents to be satisfactory and proper and the recitals contained therein to be true, correct and complete; and has determined, subject to the conditions set forth in Section 1.11, to authorize the issuance of the Bonds, the execution and delivery of such documents and the taking of such other actions as may be necessary or convenient in connection therewith; NOW, THEREFORE,

BE IT RESOLVED BY THE GOVERNING BOARD OF THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS:

#### ARTICLE I

##### ISSUANCE OF BONDS; APPROVAL OF DOCUMENTS

Section 1.1--Issuance, Execution and Delivery of the Bonds. That the issuance of the Bonds is hereby authorized, under and in accordance with the conditions set forth herein and in the Indenture, and that, upon execution and delivery of the Indenture, the authorized representatives of the Department named in this Resolution each are authorized hereby to execute, attest and affix the Department's seal to the Bonds and to deliver the Bonds to the Attorney General of the State of Texas for approval, the Comptroller of Public Accounts of the State of Texas for registration and the Trustee for authentication (to the extent required in the Indenture), and thereafter to deliver the Bonds to the order of the initial purchaser thereof.

Section 1.2--Interest Rate, Principal Amount, Maturity and Price. That: (i) subject to the reset provisions contained in the Indenture, the interest rate on the Series A Bonds shall be (A) from the date of issuance through, and including, February 28, 2003, 7.9% per annum, and (B) thereafter until the maturity date thereof, 7.2%, and the interest rate on the Series B Bonds shall be from the date of issuance to the maturity date thereof, 9.25%; (ii) the aggregate principal amount of the Series A Bonds shall be \$12,500,000 and the aggregate principal amount of the Series B Bonds shall be \$400,000; and (iii) the

## Hillside Apartments

### EXHIBIT 8

final maturity of the Series A Bonds shall occur on December 1, 2041, and the final maturity of the Series B Bonds shall occur on December 1, 2009.

Section 1.3--Approval, Execution and Delivery of the Indenture. That the form and substance of the Indenture are hereby approved, and that the authorized representatives of the Department named in this Resolution each are authorized hereby to execute, attest and affix the Department's seal to the Indenture and to deliver the Indenture to the Trustee.

Section 1.4--Approval, Execution and Delivery of the Loan Agreement and Regulatory Agreement. That the form and substance of the Loan Agreement and the Regulatory Agreement are hereby approved, and that the authorized representatives of the Department named in this Resolution each are authorized hereby to execute, attest and affix the Department's seal to the Loan Agreement and the Regulatory Agreement and deliver the Loan Agreement and the Regulatory Agreement to the Borrower and the Trustee.

Section 1.5--Acceptance of the Deed of Trust and Note. That the Deed of Trust and the Note are hereby accepted by the Department.

Section 1.6--Approval, Execution and Delivery of the Assignments. That the form and substance of the Assignments are hereby approved and that the authorized representatives of the Department named in this Resolution each are hereby authorized to execute, attest and affix the Department's seal to the Assignments and to deliver the Assignments to the Trustee.

Section 1.7--Approval, Execution and Delivery of the Purchase Agreement. That the form and substance of the Purchase Agreement are hereby approved, and that the authorized representatives of the Department named in this Resolution each are authorized hereby to execute and deliver the Purchase Agreement.

Section 1.8--Approval, Execution and Delivery of the Intercreditor Agreement. That the form and substance of the Intercreditor Agreement are hereby approved, and that the authorized representatives of the Department named in this Resolution each are authorized hereby to execute, attest and deliver the Intercreditor Agreement.

Section 1.9--Taking of Any Action; Execution and Delivery of Other Documents. That the authorized representatives of the Department named in this Resolution each are authorized hereby to take any actions and to execute, attest and affix the Department's seal to, and to deliver to the appropriate parties, all such other agreements, commitments, assignments, bonds, certificates, contracts, documents, instruments, releases, financing statements, letters of instruction, notices of acceptance, written requests and other papers, whether or not mentioned herein, as they or any of them consider to be necessary or convenient to carry out or assist in carrying out the purposes of this Resolution.

Section 1.10--Exhibits Incorporated Herein. That all of the terms and provisions of each of the documents listed below as an exhibit shall be and are hereby incorporated into and made a part of this Resolution for all purposes:

Exhibit B-Indenture  
Exhibit C-Loan Agreement  
Exhibit D-Regulatory Agreement  
Exhibit E -Assignments  
Exhibit F-Purchase Agreement  
Exhibit G - Intercreditor Agreement

Section 1.11--Power to Revise Form of Documents. That notwithstanding any other provision of this Resolution, the authorized representatives of the Department named in this Resolution each are authorized hereby to make or approve such revisions in the form of the documents attached hereto as



## Hillside Apartments

### EXHIBIT 8

exhibits as, in the judgment of such authorized representative or authorized representatives, and in the opinion of Vinson & Elkins L.L.P., Bond Counsel to the Department, may be necessary or convenient to carry out or assist in carrying out the purposes of this Resolution, such approval to be evidenced by the execution of such documents by the authorized representatives of the Department named in this Resolution.

Section 1.12--Authorized Representatives. That the following persons are each hereby named as authorized representatives of the Department for purposes of executing, attesting, affixing the Department's seal to, and delivering the documents and instruments and taking the other actions referred to in this Article I: Chairman of the Board, Executive Director of the Department, Acting Executive Director of the Department, Deputy Executive Director of the Department, Chief Financial Officer of the Department, Director of Bond Finance, Director of Multifamily Finance of the Department, the Secretary of the Board, and the Assistant Secretary of the Board.

Section 1.13--Conditions Precedent. That the issuance of the Bonds shall be further subject to, among other things: (a) the Project's meeting all underwriting criteria of the Department, to the satisfaction of the Executive Director or the Acting Executive Director; and (b) the execution by the Borrower and the Department of contractual arrangements satisfactory to the Department staff requiring that community service programs will be provided at the Project.

## ARTICLE II

### APPROVAL AND RATIFICATION OF CERTAIN ACTIONS

Section 2.1--Approval and Ratification of Application to Texas Bond Review Board. That the Board hereby ratifies and approves the submission of the application for approval of state bonds to the Texas Bond Review Board on behalf of the Department in connection with the issuance of the Bonds in accordance with Chapter 1231, Texas Government Code.

Section 2.2--Approval of Submission to the Attorney General of Texas. That the Board hereby authorizes, and approves the submission by the Department's Bond Counsel to the Attorney General of the State of Texas, for his approval, of a transcript of legal proceedings relating to the issuance, sale and delivery of the Bonds.

Section 2.3--Certification of the Minutes and Records. That the Secretary and the Assistant Secretary of the Board hereby are severally authorized to certify and authenticate minutes and other records on behalf of the Department for the Bonds and all other Department activities.

Section 2.4--Authority to Invest Proceeds. That the Department is authorized to invest and reinvest the proceeds of the Bonds and the fees and revenues to be received in connection with the financing of the Project in accordance with the Indenture and to enter into any agreements relating thereto only to the extent permitted by the Indenture.

Section 2.5--Approving Initial Rents. That the initial maximum rent charged by the Borrower for 100% of the units of the Project shall not exceed the amounts attached as Exhibit F to the Loan Agreement and shall be annually redetermined by the Issuer as stated in Section 2.3(s) of the Loan Agreement.

Section 2.6--Ratifying Other Actions. That all other actions taken by the Executive Director or Acting Executive Director of the Department and the Department staff in connection with the issuance of the Bonds and the financing of the Project are hereby ratified and confirmed.

## Hillside Apartments

### EXHIBIT 8

#### ARTICLE III

##### CERTAIN FINDINGS AND DETERMINATIONS

Section 3.1--Findings of the Board. That in accordance with Section 2306.223 of the Act, and after the Department's consideration of the information with respect to the Project and the information with respect to the proposed financing of the Project by the Department, including but not limited to the information submitted by the Borrower, independent studies commissioned by the Department, recommendations of the Department staff and such other information as it deems relevant, the Board hereby finds:

(a) Need for Housing Development.

(i) that the Project is necessary to provide needed decent, safe, and sanitary housing at rentals or prices that individuals or families of low and very low income or families of moderate income can afford,

(ii) the Borrower will supply well-planned and well-designed housing for individuals or families of low and very low income or families of moderate income,

(iii) the Borrower is financially responsible,

(iv) the financing of the Project is a public purpose and will provide a public benefit, and

(v) the Project will be undertaken within the authority granted by the Act to the housing finance division and the Borrower.

(b) Findings with Respect to the Borrower.

(i) that the Borrower, by operating the Project in accordance with the requirements of the Regulatory Agreement, will comply with applicable local building requirements and will supply well-planned and well-designed housing for individuals or families of low and very low income or families of moderate income, and

(ii) that the Borrower is financially responsible and has entered into a binding commitment to repay the loan made with the proceeds of the Bonds in accordance with its terms.

(c) Public Purpose and Benefits.

(i) that the Borrower has agreed to operate the Project in accordance with the Loan Agreement and the Regulatory Agreement, which require, among other things, that the Project be occupied by individuals and families of low and very low income and families of moderate income, and

(ii) that the issuance of the Bonds to finance the Project is undertaken within the authority conferred by the Act and will accomplish a valid public purpose and will provide a public benefit by assisting individuals and families of low and very low income and families of moderate income in the State of Texas to obtain decent, safe, and sanitary housing by financing the costs of the Project, thereby helping to maintain a fully adequate supply of sanitary and safe dwelling accommodations at rents that such individuals and families can afford.

Section 3.2--Determination of Eligible Tenants. That the Board has determined, to the extent permitted by law and after consideration of such evidence and factors as its deems relevant, the findings of the staff of the Department, the laws applicable to the Department and the provisions of the Act, that

## Hillside Apartments

### EXHIBIT 8

eligible tenants for the Project shall be (1) individuals and families of low and very low income, (2) persons with special needs, and (3) families of moderate income, with the income limits as set forth in the Loan Agreement and the Regulatory Agreement.

Section 3.3--Sufficiency of Mortgage Loan Interest Rate. That the Board hereby finds and determines that the interest rate on the loan established pursuant to the Loan Agreement will produce the amounts required, together with other available funds, to pay for the Department's costs of operation with respect to the Bonds and the Project and enable the Department to meet its covenants with and responsibilities to the holders of the Bonds.

Section 3.4--No Gain Allowed. That, in accordance with Section 2306.498 of the Act, no member of the Board or employee of the Department may purchase any Bond in the secondary open market for municipal securities.

Section 3.5--Waiver of Rules. That the Board hereby waives the rules contained in Sections 35 and 39, Title 10 of the Texas Administrative Code to the extent such rules are inconsistent with the terms of this Resolution and the bond documents authorized hereunder.

## ARTICLE IV

### GENERAL PROVISIONS

Section 4.1--Limited Obligations. That the Bonds and the interest thereon shall be limited obligations of the Department payable solely from the trust estate created under the Indenture, including the revenues and funds of the Department pledged under the Indenture to secure payment of the Bonds and under no circumstances shall the Bonds be payable from any other revenues, funds, assets or income of the Department.

Section 4.2--Non-Governmental Obligations. That the Bonds shall not be and do not create or constitute in any way an obligation, a debt or a liability of the State of Texas or create or constitute a pledge, giving or lending of the faith or credit or taxing power of the State of Texas. Each Bond shall contain on its face a statement to the effect that the State of Texas is not obligated to pay the principal thereof or interest thereon and that neither the faith or credit nor the taxing power of the State of Texas is pledged, given or loaned to such payment.

Section 4.3--Effective Date. That this Resolution shall be in full force and effect from and upon its adoption.

Section 4.4--Notice of Meeting. Written notice of the date, hour and place of the meeting of the Board at which this Resolution was considered and of the subject of this Resolution was furnished to the Secretary of State and posted on the Internet for at least seven (7) days preceding the convening of such meeting; that during regular office hours a computer terminal located in a place convenient to the public in the office of the Secretary of State was provided such that the general public could view such posting; that such meeting was open to the public as required by law at all times during which this Resolution and the subject matter hereof was discussed, considered and formally acted upon, all as required by the Open Meetings Act, Chapter 551, Texas Government Code, as amended; and that written notice of the date, hour and place of the meeting of the Board and of the subject of this Resolution was published in the Texas Register at least seven (7) days preceding the convening of such meeting, as required by the Administrative Procedure and Texas Register Act, Chapters 2001 and 2002, Texas Government Code, as amended. Additionally, all of the materials in the possession of the Department relevant to the subject of this Resolution were sent to interested persons and organizations, posted on the Department's website, made available in hard-copy at the Department, and filed with the Secretary of State for publication by reference in the Texas Register not later than seven (7) days before the meeting of the Board as required by Section 2306.032, Texas Government Code, as amended.

**Hillside Apartments**

**EXHIBIT 8**

PASSED AND APPROVED this \_\_\_\_\_ day of November, 2002.

By: \_\_\_\_\_  
Chairman

Attest: \_\_\_\_\_  
Secretary

[SEAL]

## Oak Hollow Apartments

### EXHIBIT 8

#### EXHIBIT A

#### DESCRIPTION OF PROJECT

Owner: Tx Hillside Apartments, L.P., a Texas limited partnership

Project: The Project is a 236-unit multifamily facility to be known as Hillside Apartments and to be located at 6100 Block of Ledbetter at Pemberton Hill Road, Dallas, Dallas County, Texas. The Project will include a total of thirteen (13) two and three story residential apartment buildings with a total of 243,800 net rentable square feet and an average unit size of 1033 square feet. The unit mix will consist of:

132 two-bedroom/two-bath units  
84 three-bedroom/two-bath units  
20 four-bedroom/two-bath units

236 Total Units

Unit sizes will range from approximately 950 square feet to approximately 1,300 square feet.

Common areas will include a picnic area, a swimming pool, a children's play area, and a community center with kitchen facilities and laundry facilities. All ground units will be wheelchair accessible and all individual units will have washer/dryer connections.

**Oak Hollow Apartments**

**EXHIBIT 8**

*AGENDA ITEM NO. 3(B)*



**TEXAS DEPARTMENT OF HOUSING  
& COMMUNITY AFFAIRS**

**HOUSING FINANCE DIVISION - MULTIFAMILY**

**REQUEST FOR BOARD APPROVAL  
OF BOND ISSUANCE**

**2001 PRIVATE ACTIVITY MULTIFAMILY REVENUE BONDS**

**OAK HOLLOW APARTMENTS  
\$8,625,000 Tax Exempt - Series 2001**

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**TABLE OF EXHIBITS**

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TAB 2	Critical Date Schedule
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TAB 5	Rental Restrictions Explanation Results & Analysis
TAB 6	Location Map Site Plan Miscellaneous Project Information
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*(\*) Preliminary - subject to change*

**Oak Hollow Apartments**

**EXHIBIT 8  
BOARD APPROVAL**

**MEMORANDUM**

November 14, 2001

**PROJECT:** Oak Hollow Apartments, 2965 E. Ledbetter, Dallas County, Dallas, Texas 75216

**PROGRAM:** Texas Department of Housing & Community Affairs  
2001 Private-Activity Multifamily Mortgage Revenue Bonds  
(Reservation received 8/27/2001)

**ACTION REQUESTED:** Approve the issuance of multifamily mortgage revenue bonds (the "Bonds") by the Texas Department of Housing and Community Affairs (the "Department"). The Bonds will be issued under Chapter 1371, Texas Government Code, as amended, and under Chapter 2306, Texas Government Code, the Department's Enabling Act (the "Act"), which authorizes the Department to issue its revenue bonds for its public purposes as defined therein.

**PURPOSE:** The proceeds of the Bonds will be used to fund a mortgage loan (the "Mortgage Loan") to Oak Hollow Housing, L.P., a Texas limited partnership (the "Borrower"), to finance the acquisition, construction, equipment and long-term financing of a new, 153 unit multifamily residential rental project located at 2965 E. Ledbetter, Dallas County, Dallas, Texas 75216 (the "Project"). A portion of the Bonds will be tax-exempt by virtue of the Project's qualifying as a residential rental project.

**BOND AMOUNT:** \$8,625,000\* Tax-exempt bonds Series 2001 State Volume Cap

**\* The aggregate principal amount of the Bonds will be determined by the Department based on its rules, underwriting, the cost of construction of the Project and the amount for which Bond Counsel can deliver its Bond Opinion.**

**ANTICIPATED CLOSING DATE:** The Department received a volume cap allocation for the Bonds on August 27, 2001 pursuant to the Texas Bond Review Board's 2001 Private Activity Bond Allocation Program. While the Department is required to deliver the Bonds on or before December 24, 2001, the anticipated closing date is December 14, 2001

**BORROWER:** Oak Hollow Housing, L.P., the sole general partner of which is Oak Hollow Housing Development Corporation, a Texas corporation The principal of the general partner is Brain Potashnik.

## Oak Hollow Apartments

### EXHIBIT 8

#### COMPLIANCE HISTORY:

The Compliance Report reveals that the principles above have a combined total of eleven properties monitored by the Department.

Of the eleven properties, seven have received a compliance score. Two received a score of zero (no compliance issues); two received a score of three; and three properties received scores of 1, 10, and 14 respectively, all of which are below the material non-compliance threshold score of 30 points.

~~Brian Potashnik, the principal of the Borrower, has eight (8) tax credit properties in the Department's tax credit portfolio. The Department has conducted on-site compliance reviews on five (5) of these properties. Based upon those reviews, two properties have non-compliance scores of eleven (11) each, which is below the material non-compliance threshold score of 30 points.~~

#### ISSUANCE TEAM & ADVISORS:

Related Capital (Equity Provider)  
Wells Fargo Bank, Texas, NA, (Trustee)  
Vinson & Elkins L.L.P. (Bond Counsel)  
Dain Rauscher, Inc. (Financial Advisor)  
McCall, Parkhurst & Horton, L.L.P. (Issuer Disclosure Counsel)  
First Union National Bank (Letter of Credit Provider)

#### BOND PURCHASER:

The tax-exempt bonds will be purchased by Charter Mac Equity Issue Trust. The purchaser and any subsequent purchaser will be required to sign the Department's standard traveling investor letter.

#### PROJECT DESCRIPTION:

The Project is a 153-unit apartment community to be constructed on a 7+/- acre site at 2965 E. Ledbetter in Dallas County, Dallas, Texas. The site density will be 21.4 dwelling units per acre. The Project will include a total of eight (8) two and three story wood-framed buildings with a total of 157,050 net rentable square feet and an average unit size of 1,026 square feet. The project will include a small laundry/ maintenance building as well as a centrally located community building containing approximately 3,380 square feet primarily for office, leasing, social and fitness activities, community and educational meetings, hot lunch programs, and health and transportation services. The community building will contain a parlor with television and fireplace, a residential kitchen, a foyer, restrooms, and public telephone and vending areas. On-site amenities will include a swimming pool, a children's play area and several picnic areas interspersed among the buildings. The perimeter of the apartment complex will be fenced and will have controlled access security gates with parking provided for 153 carports, and 195 open spaces.



## Oak Hollow Apartments

### EXHIBIT 8

<u>Units</u>	<u>Unit Type</u>	<u>Square Feet</u>
75	2-Bedrooms/2-Baths	950
78	3-Bedrooms/2-Baths	1100

#### **SET-ASIDE UNITS:**

For Bond covenant purposes, at least forty (40%) of the residential units in the development are both rent restricted and occupied by persons or families earning not more than sixty percent (60%) of the area median income. Five percent (5%) of the units in each project will be set aside on a priority basis for persons with special needs. For Tax Credit purposes, the Borrower will set-aside 100% of the units at sixty percent (60%) of the area median income.

#### **RENT CAPS:**

For Bond covenant purposes, the rental rates on 100% of the units will be restricted to a maximum rent that will not exceed thirty percent (30%) of the income, adjusted for family size, for fifty percent (50%) of the area median income.

#### **TENANT SERVICES:**

[Undetermined.] Borrower will be required to provide a Tenant Services Plan based on the tenant profile upon lease-up that conforms to the Department's program guidelines.

#### **DEPARTMENT ORIGINATION FEES:**

\$1,000 Pre-Application Fee (Paid).  
\$10,000 Application Fee (Paid).  
\$43,125 Issuance Fee (.50% of the bond amount paid at closing).

#### **DEPARTMENT ANNUAL FEES:**

Bond Administration = 0.10% of bond amount (\$8,625 for 1<sup>st</sup> year).  
Compliance Fee = \$3,825 (\$25/unit), adjusted annually for CPI.

*(Department's annual fees may be adjusted, including deferral, to accommodate underwriting criteria and Project cash flow.)*

#### **ASSET OVERSIGHT FEE:**

\$25/unit/year (\$3,825) to TSAHC or assigns, adjusted annually for CPI.

#### **TAX CREDITS:**

The Borrower has applied to the Department to receive a Determination Notice for the 4% tax credit that accompanies the private-activity bond allocation. The tax credit equates to \$597,531 per annum and represents equity for the transaction. To capitalize on the tax credit, the Borrower will sell a substantial portion of the limited partnership, typically 99%, to raise equity funds for the project. Although a tax credit sale has not been finalized, the Borrower anticipates raising approximately \$4,840,000 of equity for the transaction.

## Oak Hollow Apartments

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#### **BOND STRUCTURE:**

The Bonds are proposed to be issued under a Trust Indenture (the "Trust Indenture") that will describe the fundamental structure of the Bonds, permitted uses of Bond proceeds and procedures for the administration, investment and disbursement of Bond proceeds and program revenues.

The Bonds will be privately placed with the Bond Purchaser, and will mature over a term of 40 years for the Tax-Exempt Bonds. During the construction and lease-up period, the Bonds will pay as to interest only. The Bonds will be secured by a first lien on the Project.

During the Construction Phase, the Letter of Credit Provider will provide a Letter of Credit to the benefit of the Bond Purchaser to secure the Borrower's reimbursement obligations during the construction phase. The Borrower's reimbursement obligations to the Letter of Credit Provider will be secured by a 2nd lien mortgage on the property and certain related obligations to the Trustee on behalf of the Bond Purchaser. Upon satisfaction of certain Conversion Requirements, the Mortgage Loan will convert from the Construction Phase to the Permanent Phase. The Bond Purchaser will return the Letter of Credit to the Interim Lender Letter of Credit Provider upon completion of construction.

**The Bonds are mortgage revenue bonds and, as such, create no potential liability for the general revenue fund or any other state fund. The Act provides that the Department's revenue bonds are solely obligations of the Department, and do not create an obligation, debt, or liability of the State of Texas or a pledge or loan of the faith, credit or taxing power of the State of Texas. The only funds pledged by the Department to the payment of the Bonds are the revenues from the financing carried out through the issuance of the Bonds.**

**BOND INTEREST RATES:** The interest rate on the Tax Exempt Bonds will be 7.90% until December 1, 2003 and then shall be set at 7.20% thereafter.

#### **CREDIT**

#### **ENHANCEMENT:**

The bonds will be unrated with no credit enhancement.

#### **FORM OF BONDS:**

The Bonds will be issued in book entry form and in denominations of \$100,000 or any integral multiple of \$5,000 in excess of \$100,000.

#### **MATURITY/SOURCES & METHODS OF REPAYMENT:**

The Bonds will bear interest at a fixed rate until maturity and will be payable monthly. During the construction phase, the Bonds will be payable as to interest only, from an initial deposit at closing to the Capitalized Interest Account of the Construction Fund, earnings derived from amounts held on deposit in an investment agreement, and other funds deposited to the Revenue

## Oak Hollow Apartments

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Fund specifically for capitalized interest during a portion of the construction phase. After conversion to the permanent phase, the Bonds will be paid from revenues earned from the Mortgage Loan.

#### TERMS OF THE MORTGAGE LOAN:

The Mortgage Loan is a non-recourse obligation of the Owner (which means, subject to certain exceptions, the Owner is not liable for the payment thereof beyond the amount realized from the pledged security) providing for monthly payments of interest during the construction phase and level monthly payments of principal and interest upon conversion to the permanent phase. A Deed of Trust and related documents convey the Owner's interest in the project to secure the payment of the Mortgage Loan.

#### REDEMPTION OF BONDS PRIOR TO MATURITY:

The Bonds are subject to redemption under any of the following circumstances:

#### *Mandatory Redemption:*

- (g) Under certain circumstances, the Bonds are subject to mandatory redemption in whole or in part, in the event of:
  - (1) the project has not achieved Stabilization within twenty-four (24) months from the end of the Construction Period; or, (2) damage to or destruction or condemnation of the Project to the extent that Insurance Proceeds or a Condemnation Award in connection with the Project are deposited in the Revenue Fund and are not to be used to repair or restore the Project.
- (h) A portion of the Bonds are subject to mandatory redemption from proceeds remaining in the Construction Fund that are not needed to complete the project which are not qualified project costs.
- (i) The Bonds are subject to a mandatory redemption in part according to the dates and amounts indicated on the Mandatory Sinking Fund Schedule.
- (j) The Bonds are subject to redemption, in whole or in part, following the occurrence of an Event of Default under the Facility Agreement.
- (k) The Bonds are subject to mandatory redemption upon the determination of Taxability if the Owner of a Tax-Exempt Bond presents his Tax-Exempt bond or Bonds for redemption, on any date selected by such Owner, specified

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in a notice in writing delivered to the Borrower and the Issuer at least thirty (20) days prior to such date.

- (l) The Bonds are subject to mandatory redemption, in whole, at the option of the Owner of all the Bonds, at any time on or after December 1, 2018, the seventeenth (17th) anniversary of the Closing Date, if the Owners elect redemption and provide a 180 day written notice to the Issuer, Trustee and Borrower.

#### **Optional Redemption:**

- (b) The Bonds are subject to redemption, in whole, at the option of the Borrower, at any time on or after December 1, 2018, based upon an optional prepayment of the Mortgage Loan by the Borrower.

#### **FUNDS AND ACCOUNTS/FUNDS ADMINISTRATION:**

Under the Trust Indenture Wells Fargo Bank Texas N.A. (the "Trustee") will serve as registrar and authenticating agent for the Bonds, trustee of certain of the funds created under the Trust Indenture (described below), and will have responsibility for a number of loan administration and monitoring functions.

Moneys on deposit in Trust Indenture funds are required to be invested in eligible investments prescribed in the Trust Indenture until needed for the purposes for which they are held.

#### **The Trust Indenture will create up to five (5) funds with the following general purposes:**

1. Construction Fund – On the closing date, the proceeds of the Tax-exempt Bonds shall be deposited in the Construction Fund which consists of five (5) main accounts as follows:
  - (a) Loan Account– represents a portion of the proceeds of the sale of the bonds. Bond proceeds are used to pay for Qualified Project Costs;
  - (b) Cost of Issuance Account – represents a portion of the initial equity contribution of the Borrower of which amounts for the payments of the costs of issuance are deposited and disbursed;
  - (c) Insurance and Condemnation Proceeds Account – represents the total proceeds of insurance actually paid or payable by an insurance

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company pursuant to a claim made on the insurance policy;

- (d) Equity Account – represents the balance of the initial equity contribution of the Borrower; and,
  - (e) Capitalized Interest Account – represents a portion of the initial equity contribution of the Borrower from which amounts may be transferred to the Revenue Fund in order to pay interest on the Bonds until the completion date of the project.
2. Replacement Reserve Fund – Fund into which amounts are held in reserve to cover replacement costs and ongoing maintenance to the project.
  3. Tax and Insurance Fund – moneys in the Tax and Insurance Fund are applied to the payment of real estate taxes and insurance premiums.
  4. Revenue Fund – Revenues from the project are deposited to the Revenue Fund and disbursed to sub-accounts for payment to the various funds according to the order designated under the Indenture: (1) to the payment of Interest on the Bonds; (2) to the payment of the principal or redemption price, including premium, if any on the Bonds and to the payment of Construction Administration Fees; (3) to the payment of any required deposit in the Tax and Insurance Fund; (4) to the payment of any required deposit in the Replacement Reserve Fund; (5) to the payment of the fees of the Trustee, the Servicer, the Issuer and the Asset Oversight Agent, if any, due and owing under the Loan Documents and the Indenture; (6) to the payment of any other amounts then due and owing under the Loan Documents; and (7) the remaining balance to the Borrower or such other party as may be legally entitled.
  5. Rebate Fund – Fund into which certain investment earnings are transferred that are required to be rebated periodically to the federal government to preserve the tax-exempt status of the Bonds. Amounts in this fund are held apart from the trust estate and are not available to pay debt service on the Bonds.

Essentially, all of the Tax-exempt bond proceeds will be deposited into the Construction Fund and disbursed therefrom during the Construction Phase (not to exceed 14 months) to finance the construction of the Project. Although costs of

## Oak Hollow Apartments

### EXHIBIT 8

issuance of up to two percent (2%) of the principal amount of the Tax-exempt Bonds may be paid from Tax-exempt Bond proceeds, it is currently expected that all costs of issuance will be paid by an equity contribution of the Borrower.

#### **DEPARTMENT ADVISORS:**

The following advisors have been selected by the Department to perform the indicated tasks in connection with the issuance of the Bonds.

1. Bond Counsel - Vinson & Elkins L.L.P. ("V&E") was most recently selected to serve as the Department's bond counsel through a request for proposals ("RFP") issued by the Department in August 17, 2001. V&E has served in such capacity for all Department or Agency bond financings since 1980, when the firm was selected initially (also through an RFP process) to act as Agency bond counsel.
2. Bond Trustee Wells Fargo Bank Texas N.A. formerly Norwest Bank N.A. was selected as bond trustee by the Department pursuant to a request for proposal process in June 1996.
3. Financial Advisor - Dain Rauscher, Inc., formerly Rauscher Pierce Refsnes, was selected by the Department as the Department's financial advisor through a request for proposals process in September 1991.

#### **ATTORNEY GENERAL REVIEW OF BONDS:**

No preliminary written review of the Bonds by the Attorney General of Texas has yet been made. Department bonds, however, are subject to the approval of the Attorney General, and transcripts of proceedings with respect to the Bonds will be submitted for review and approval prior to the issuance of the Bonds.

# Oak Hollow Apartments

## EXHIBIT 8

2001-013 Oak Hollow Apartments				
<b>General Information</b>		<b>Principal Contact</b>		
Bond Amount:	\$12,500,000	Oak Hollow Housing, L.P.		
Program:	2001 Private Activity	Brian Potashnic		
Bond Structure:		5910 N. Central Expressway		
Purpose:	New Construction	Dallas, Texas 75206		
Status:	Full Application	(214) 891-1402		
A/O:	RFO	(214) 987-3507		
<b>Project(s)</b>		<b>City</b>	<b>Units</b>	
Oak Hollow Apartments		Dallas	153	
<b>Project History - Timeline</b>		<b>Responsibility</b>	<b>Due Date</b>	<b>Status</b>
BRB Reservation received		BRB	8/27/2001	Done
Complete Application due to TDHCA		Applicant	9/12/2001	Done
35 day reservation filing		V&E	10/1/2001	Done
Kick-of conference call		All	10/5/2001	Done
TEFRA notice in newspaper		V&E, Applicant	10/7/2001	Done
Deadline to submit TEFRA notice to Tx Reg			10/10/2001	Done
1 <sup>st</sup> draft of Bond Documents		V&E	10/17/2001	Done
1 <sup>st</sup> due diligence conference call		All	10/19/2001	Done
TEFRA notice published in Tx Reg		TDHCA, Tx Reg	10/19/2001	Done
TEFRA Signage on property		Applicant	10/22/2001	Done
2nd draft of Bond Documents		V&E	10/23/2001	Done
2nd due diligence conference call		All	10/29/2001	Done
TDHCA Board draft write-up due		TDHCA, Tx Reg	10/30/2001	Done
Final construction plans, appraisal, and all other due diligence materials are due to TDHCA		Applicant	10/30/2001	Done
All third party debt & equity commitments are due to TDHCA		Applicant	10/30/2001	Done
Notice of Intent to the BRB		TDHCA	11/1/2001	Done
3 <sup>rd</sup> draft of Bond Documents		V&E	10/1/2001	Done
TDHCA underwriting due		TDHCA	11/5/2001	Scheduled
Board final write-ups due		TDHCA	11/5/2001	Scheduled
Bond Review Board application due		TDHCA	11/6/2001	Scheduled
TEFRA Hearing (7:00pm)		TDHCA, Applicant	11/6/2001	Scheduled
TDHCA Board Meeting agenda published		TDHCA	11/6/2001	Scheduled
File transcripts with Attorney General		V&E	11/12/2001	Scheduled
3 <sup>rd</sup> due diligence conference call		All	11/12/2001	Scheduled
BRB Planning session		TDHCA, V&E, FA, Applicant	11/13/2001	Scheduled
TDHCA Board Meeting		TDHCA, V&E, FA, Applicant	11/14/2001	Scheduled
Bond Review Board Meeting		TDHCA, V&E, FA, Applicant	11/29/2001	Scheduled
Circulate draft of closing memorandum		Underwriter	12/3/2001	Scheduled
Price Bonds		Underwriter	12/6/2001	Scheduled
Circulate Closing Memorandum		Underwriter	12/12/2001	Scheduled
Final Building permits due to TDHCA		Applicant	12/13/2001	Scheduled
Pre-close Bonds		All	12/13/2001	Scheduled

## Oak Hollow Apartments

### EXHIBIT 8

Close Bonds		All	12/14/2001	Scheduled
Reservation Expiration Date		BRB	12/24/2001	Scheduled



## Oak Hollow Apartments

### EXHIBIT 8

<b>Sources of Funds</b>	
Bond Proceeds, Series 2001A Bonds (Tax-Exempt)	\$ 8,625,000
Tax Credit Proceeds	4,739,000
Interest Income	72,538
Deferred Developer's Fee	424,574
<b>Total Sources</b>	<b>\$ 13,861,112</b>

<b>Uses of Funds</b>	
Deposit to Mortgage Loan Fund (Construction funds)	\$ 10,791,189
Capitalized Interest	870,482
Operating Reserve	100,000
Developer's Overhead & Fee	1,595,438
Costs of Issuance	
Direct Bond Related	170,253
Bond Purchaser Costs	133,750
Real Estate Closing Costs	200,000
<b>Total Uses</b>	<b>\$ 13,861,112</b>

<b>Direct Bond Related</b>	
Department Issuance Fee (.50% of Issuance)	\$ 43,125
Department Application Fee	11,000
TDHCA Bond Compliance Fee (\$25 per unit)	3,825
Bond Counsel (Note 1)	60,000
Disclosure Counsel (Note 1)	2,500
Department Financial Advisor	30,000
Trustee's Fees (Note 1)	7,500
Trustee's Counsel (Note 1)	5,000
Attorney General Transcript Fee	1,250
Texas Bond Review Board Fee (.025% of Issuance)	2,303
TEFRA Hearing Publication Expenses	3,750
<b>Total Direct Bond Related</b>	<b>\$ 170,253</b>

<b>Bond Purchase Costs</b>	
Loan Origination Fee (Charter Mac)	86,250
Due Diligence Cost (Charter Mac)	12,500
Legal Fees (Charter Mac)	35,000
<b>Total</b>	<b>\$ 133,750</b>

<b>Other Transaction Costs</b>	
Letter of Credit Origination Fee	64,688

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### EXHIBIT 8

Letter of Credit Legal Fees	15,000
Tax Credit Application (\$15/u) and Determination Fee (4% ann. tax cr.)	25,698
<b>Total</b>	<b>\$ 105,386</b>

<b>Real Estate Closing Costs</b>	
Title & Recording (Const.& Perm.)	100,000
Property Taxes	50,000
Borrower Counsel	50,000
<b>Total Real Estate Costs</b>	<b>\$ 200,000</b>

**Estimated Total Costs of Issuance** **\$ 609,389**

Costs of issuance of up to two percent (2%) of the principal amount of the Bonds may be paid from Bond proceeds. Costs of issuance in excess of such two percent must be paid by an equity contribution of the Borrower.

Note 1: These estimates do not include direct, out-of-pocket expenses (i.e. travel). Actual Bond Counsel and Disclosure Counsel are based on an hourly rate and the above estimate does not include on-going administrative fees.

# Oak Hollow Apartments

## EXHIBIT 8

MULTIFAMILY FINANCIAL ASSISTANCE REQUEST: Comparative Analysis													
Oak Hollow, Dallas, LIHTC 01435/MFB 2001-013													
Type of Unit	Number	Bedrooms	No. of Baths	Size in SF	Gross Rent Lmt.	Net Rent per Unit			Utilities	Wt: Sw Tr:			
TC(50%)	75	2	2	950	\$725	\$664	\$49,800	\$0.70	\$61.00	\$52			
TC(50%)	78	3	2	1,100	837	767	59,826	0.70	70.00	61.			
<b>TOTAL:</b>	<b>153</b>		<b>AVERAGE:</b>	<b>1,026</b>	<b>\$782</b>	<b>\$717</b>	<b>\$109,626</b>	<b>\$0.70</b>	<b>\$65.59</b>	<b>\$56</b>			
<b>INCOME</b>		Total Net Rentable Sq Ft:			<b>157,050</b>	<b>TDHCA</b>		<b>APPLICANT</b>					
<b>POTENTIAL GROSS RENT</b>						\$1,315,512	\$1,332,528						
Secondary Income			Per Unit Per Month:		\$20.00	36,720	55,536	\$30.25	Per Unit Per Month				
Other Support Income: (describe)						0	0						
<b>POTENTIAL GROSS INCOME</b>						\$1,352,232	\$1,388,064						
Vacancy & Collection Loss			% of Potential Gross Income:		-7.50%	(101,417)	(97,164)	-7.00%	of Potential Gross Rent				
Employee or Other Non-Rental Units or Concessions						0	0						
<b>EFFECTIVE GROSS INCOME</b>						\$1,250,815	\$1,290,900						
<b>EXPENSES</b>		% OF EGI		PER UNIT		PER SQ FT		PER SQ FT		PER UNIT			
General & Administrative		3.99%		\$326	\$0.32	\$49,905	\$37,000	\$0.24	\$242	2.8			
Management		5.00%		409	0.40	62,541	64,545	0.41	422	5.0			
Payroll & Payroll Tax		8.11%		663	0.65	101,439	106,500	0.68	696	8.2			
Repairs & Maintenance		4.66%		381	0.37	58,300	60,300	0.38	394	4.6			
Utilities		2.68%		219	0.21	33,516	29,800	0.19	195	2.3			
Water, Sewer, & Trash		5.70%		466	0.45	71,260	42,800	0.27	280	3.3			
Property Insurance		2.01%		164	0.16	25,128	20,725	0.13	135	1.6			
Property Tax		2.72	6.65%	544	0.53	83,232	84,150	0.54	550	6.5			
Reserve for Replacements		2.45%		200	0.19	30,600	30,600	0.19	200	2.3			
Supportive Services		2.24%		183	0.18	28,000	28,000	0.18	183	2.1			
<b>TOTAL EXPENSES</b>		<b>43.49%</b>		<b>\$3,555</b>	<b>\$3.46</b>	<b>\$543,920</b>	<b>\$504,420</b>	<b>\$3.21</b>	<b>\$3,297</b>	<b>39.1</b>			
<b>NET OPERATING INC</b>		<b>56.51%</b>		<b>\$4,620</b>	<b>\$4.50</b>	<b>\$706,894</b>	<b>\$786,480</b>	<b>\$5.01</b>	<b>\$5,140</b>	<b>60.9</b>			
<b>DEBT SERVICE</b>													
Charter/Mac		56.20%		\$4,594	\$4.48	\$702,919	\$702,919	\$4.48	\$4,594	54.4			
Trustee Fee		0.28%		\$23	\$0.02	\$3,500	0	\$0.00	\$0	0.0			
TDHCA Admin. Fees		0.74%		\$60	\$0.06	9,210	0	\$0.00	\$0	0.0			
Asset Oversight &		0.61%		\$50	\$0.05	7,650	3,825	\$0.02	\$25	0.3			

# Oak Hollow Apartments

## EXHIBIT 8

Compliance Fees												
NET CASH FLOW		-1.31%		(\$107)		(\$0.10)		(\$16,385)	\$79,736	\$0.51	\$521	6.1
AGGREGATE DEBT COVERAGE RATIO								0.98	1.11			
BONDS & TRUSTEE FEE-ONLY DEBT COVERAGE RATIO								1.00				
BONDS-ONLY DEBT COVERAGE RATIO								1.01				
ALTERNATIVE I AGGREGATE DEBT COVERAGE RATIO								1.07				
ALTERNATIVE II AGGREGATE DEBT COVERAGE RATIO								1.04				
<b>CONSTRUCTION COST</b>												
Description	Factor	% of TOTAL	PER UNIT	PER SQ FT	TDHCA	APPLICANT		PER UNIT				
Acquisition Cost (site or bldng)		%	\$4,902	\$4.78	\$750,000	\$750,000	\$4.78	\$4,902	5.2			
Off-Sites		0.00%	0	0.00	0	0	0.00	0	0.0			
Sitework		6.50%	5,850	5.70	895,050	895,050	5.70	5,850	6.2			
Direct Construction		47.74%	42,962	41.85	6,573,221	6,608,200	42.08	43,191	46.1			
Contingency	5.00%	2.71%	2,441	2.38	373,414	456,162	2.90	2,981	3.1			
General Requirements	6.00%	3.25%	2,929	2.85	448,096	456,162	2.90	2,981	3.1			
Contractor's G & A	2.00%	1.08%	976	0.95	149,365	152,054	0.97	994	1.0			
Contractor's Profit	6.00%	3.25%	2,929	2.85	448,096	456,162	2.90	2,981	3.1			
Indirect Construction		4.91%	4,422	4.31	676,550	676,550	4.31	4,422	4.7			
Ineligible Expenses		3.69%	3,318	3.23	507,694	507,694	3.23	3,318	3.5			
Developer's G & A	2.00%	1.54%	1,388	1.35	212,367	0	0.00	0	0.0			
Developer's Profit	13.00%	10.03%	9,022	8.79	1,380,383	2,022,000	12.87	13,216	14.1			
Interim Financing		7.66%	6,892	6.71	1,054,536	1,054,536	6.71	6,892	7.3			
Reserves		2.18%	1,961	1.91	300,000	300,000	1.91	1,961	2.0			
<b>TOTAL COST</b>		<b>100.00%</b>	<b>\$89,992</b>	<b>\$87.67</b>	<b>\$13,768,771</b>	<b>\$14,334,570</b>	<b>\$91.27</b>	<b>\$93,690</b>	<b>100.0</b>			
<b>SOURCES OF FUNDS</b>												
<b>ALTERNATIVE I</b>												
<b>ALTERNATIVE II</b>												
Charter/Mac		66.89%	\$60,196	\$58.64	\$9,210,000	\$9,210,000	\$8,415,000	\$8,625,000	Max Guide			
LIHTC Syndication Proceeds		35.15%	\$31,634	\$30.82	4,840,000	4,840,000	4,762,821	4,762,821	\$11,5			
Additional Financing		0.00%	\$0	\$0.00	0	0	0	0				
Deferred Developer's Fee		2.07%	\$1,860	\$1.81	284,570	284,570						
Additional (excess) Funds Required		-4.11%	(\$3,698)	(\$3.60)	(565,799)	0	764,649	554,649				
<b>TOTAL SOURCES</b>					<b>\$13,768,771</b>	<b>\$14,334,570</b>	<b>\$13,942,470</b>	<b>\$13,942,470</b>				
<b>MULTIFAMILY FINANCIAL ASSISTANCE REQUEST (continued)</b>												

# Oak Hollow Apartments

## EXHIBIT 8

**Oak Hollow, Dallas, LIHTC 01435/MFB 2001-013**

<b>DIRECT CONSTRUCTION COST ESTIMATE</b>						<b>PAYMENT COMPUTATION</b>					
Residential Cost Handbook											
Average Quality Multiple Residence Basis											
CATEGORY	FACTOR	UNITS/SQ FT	PER SF	AMOUNT		Primary	\$9,210,000	Term		48	
						Int Rate	7.20%	DCR		1.0	
Base Cost			\$40.20	\$6,312,997							
Adjustments						<b>Secondary</b>		Term			
Exterior Wall Finish	1.20%		\$0.48	\$75,756		Int Rate		Subtotal DCR		0.9	
Fire Sprinkler & Alarms	\$1.55	157,050	1.55	243,428							
Roofing			0.00	0		<b>Additional</b>		Term			
Subfloor			(1.96)	(307,818)		Int Rate		Aggregate DCR		0.9	
Floor Cover			1.82	285,831							
Porches/Balconies	\$20.00	43,470	5.53	869,256		<b>ALTERNATIVE FINANCING STRUCTURE</b>					
Plumbing	\$585	459	1.71	268,515		<b>ALTERNATIVE I</b>					
Built-In Appliances	\$1,550	153	1.51	237,150		Primary Debt Service				\$65,000	
Exterior Stairs	\$1,350	44	0.38	59,400		Trustee Fee		3,500		3,500	
Floor Insulation			0.00	0		TDHCA Fees		16,860		44,000	
Heating/Cooling			1.41	221,441		<b>NET CASH FLOW</b>		\$44,290		\$28,000	
Garages/Carports	\$7.53	16,400	0.79	123,492							
Comm &/or Aux bldgs	\$55.81	3,383	1.20	188,802		<b>ALTERNATIVE I</b>				Term 48	
Enclosed Storage Adjust	\$49.00	2,520	0.79	123,480		Int Rate	7.20%	DCR		1.0	
<b>SUBTOTAL</b>			<b>55.41</b>	<b>8,701,729</b>							
Current Cost Multiplier	1.02		1.11	174,035		<b>Fees</b>		Term			
Local Multiplier	0.91		(4.99)	(783,156)		Int Rate		Subtotal DCR		1.0	
<b>TOTAL DIRECT CONSTRUCTION COSTS</b>			<b>\$51.53</b>	<b>\$8,092,608</b>							
Plans, specs, survy, bld prmts	3.90%		(\$2.01)	(\$315,612)		<b>ALTERNATIVE II</b>				Term 48	
Interim Construction Interest	3.38%		(1.74)	(273,126)		Int Rate	7.20%	Aggregate DCR		1.0	
Contractor's OH & Profit	11.50%		(5.93)	(930,650)							
<b>NET DIRECT CONSTRUCTION COSTS</b>			<b>\$41.85</b>	<b>\$6,573,221</b>		<b>Fees &amp; Supportive Services</b>		Term			
						Int Rate		Subtotal DCR		1.0	

# Oak Hollow Apartments

## EXHIBIT 8

											Rate		
<b>OPERATING INCOME &amp; EXPENSE PROFORMA: RECOMMENDED FINANCING STRUCTURE</b>													
	3.00%	YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5	YEAR 10	YEAR 15	YEAR 20				
<b>INCOME at</b>	<b>3.00%</b>	<b>YEAR 1</b>	<b>YEAR 2</b>	<b>YEAR 3</b>	<b>YEAR 4</b>	<b>YEAR 5</b>	<b>YEAR 10</b>	<b>YEAR 15</b>	<b>YEAR 20</b>				
POTENTIAL GROSS RENT		\$1,315,512	\$1,354,977	\$1,395,627	\$1,437,495	\$1,480,620	\$1,716,445	\$1,989,830	\$2,306,758			\$3,180,000	
Secondary Income		36,720	37,822	38,956	40,125	41,329	47,911	55,542	64,389			86,000	
Other Support Income: (describe)		0	0	0	0	0	0	0	0			0	
POTENTIAL GROSS INCOME		1,352,232	1,392,799	1,434,583	1,477,620	1,521,949	1,764,356	2,045,372	2,371,147			3,180,000	
Vacancy & Collection Loss		(101,417)	(104,460)	(107,594)	(110,822)	(114,146)	(132,327)	(153,403)	(177,836)			(238,000)	
Employee or Other Non-Rental Units or Concessions		0	0	0	0	0	0	0	0			0	
EFFECTIVE GROSS INCOME		\$1,250,815	\$1,288,339	\$1,326,989	\$1,366,799	\$1,407,803	\$1,632,029	\$1,891,969	\$2,193,311			\$2,942,000	
<b>EXPENSES at</b>	<b>4.00%</b>												
General & Administrative		\$49,905	\$51,901	\$53,977	\$56,136	\$58,382	\$71,030	\$86,419	\$105,142			\$155,000	
Management		62,541	64,417	66,349	68,340	70,390	81,601	94,598	109,666			147,000	
Payroll & Payroll Tax		101,439	105,497	109,716	114,105	118,669	144,379	175,660	213,717			316,000	
Repairs & Maintenance		58,300	60,632	63,057	65,579	68,202	82,979	100,956	122,829			181,000	
Utilities		33,516	34,857	36,251	37,701	39,209	47,704	58,039	70,614			104,000	
Water, Sewer & Trash		71,260	74,110	77,075	80,158	83,364	101,425	123,399	150,134			222,000	
Insurance		25,128	26,133	27,178	28,266	29,396	35,765	43,514	52,941			78,000	
Property Tax		83,232	86,561	90,024	93,625	97,370	118,465	144,131	175,357			259,000	
Reserve for Replacements		30,600	31,824	33,097	34,421	35,798	43,553	52,989	64,470			95,000	
Other		28,000	29,120	30,285	31,496	32,756	39,853	48,487	58,992			87,000	
<b>TOTAL EXPENSES</b>		<b>\$543,920</b>	<b>\$565,052</b>	<b>\$587,010</b>	<b>\$609,827</b>	<b>\$633,536</b>	<b>\$766,755</b>	<b>\$928,192</b>	<b>\$1,123,860</b>			<b>\$1,660,000</b>	
<b>NET OPERATING INCOME</b>		<b>\$706,894</b>	<b>\$723,287</b>	<b>\$739,980</b>	<b>\$756,972</b>	<b>\$774,267</b>	<b>\$865,275</b>	<b>\$963,777</b>	<b>\$1,069,451</b>			<b>\$1,282,000</b>	
<b>DEBT SERVICE</b>													
First Lien Financing		\$642,244	\$642,244	\$642,244	\$642,244	\$642,244	\$642,244	\$642,244	\$642,244			\$642,244	
Trustee Fee		3,500	3,500	3,500	3,500	3,500	3,500	3,500	3,500			3,500	
TDHCA Admin. Fees		9,210	8,377	8,337	8,294	8,247	7,956	7,540	6,945			4,000	
Asset Oversight & Compliance Fees		7,650	7,956	8,274	8,605	8,949	10,888	13,247	16,117			23,000	
Cash Flow		44,290	61,210	77,625	94,330	111,326	200,686	297,246	400,645			624,000	
AGGREGATE DCR		1.07	1.09	1.12	1.14	1.17	1.30	1.45	1.60			1.75	
BONDS & TRUSTEE FEE-ONLY DCR		1.09	1.12	1.15	1.17	1.20	1.34	1.49	1.66			1.81	
BONDS-ONLY DCR		1.10	1.13	1.15	1.18	1.21	1.35	1.50	1.67			1.83	
							\$156,006	\$248,966	\$348,946			\$512,000	
Cumulative Cash Flow		\$44,290	\$105,501	183,125.0728	277,454.7883	388,781.2208	\$1,168,812	\$2,413,642	\$4,158,370			\$9,200,000	
							\$856,799.97						
		(\$3,112.64)	\$11,790.11	\$26,964.91	\$42,412.89								
			-4,543	10,354	25,514								

Oak Hollow Apartments

EXHIBIT 8

**RENT CAP EXPLANATION**  
**Dallas MSA**

**AFFORDABILITY**  
**DEFINITION & COMMENTS**

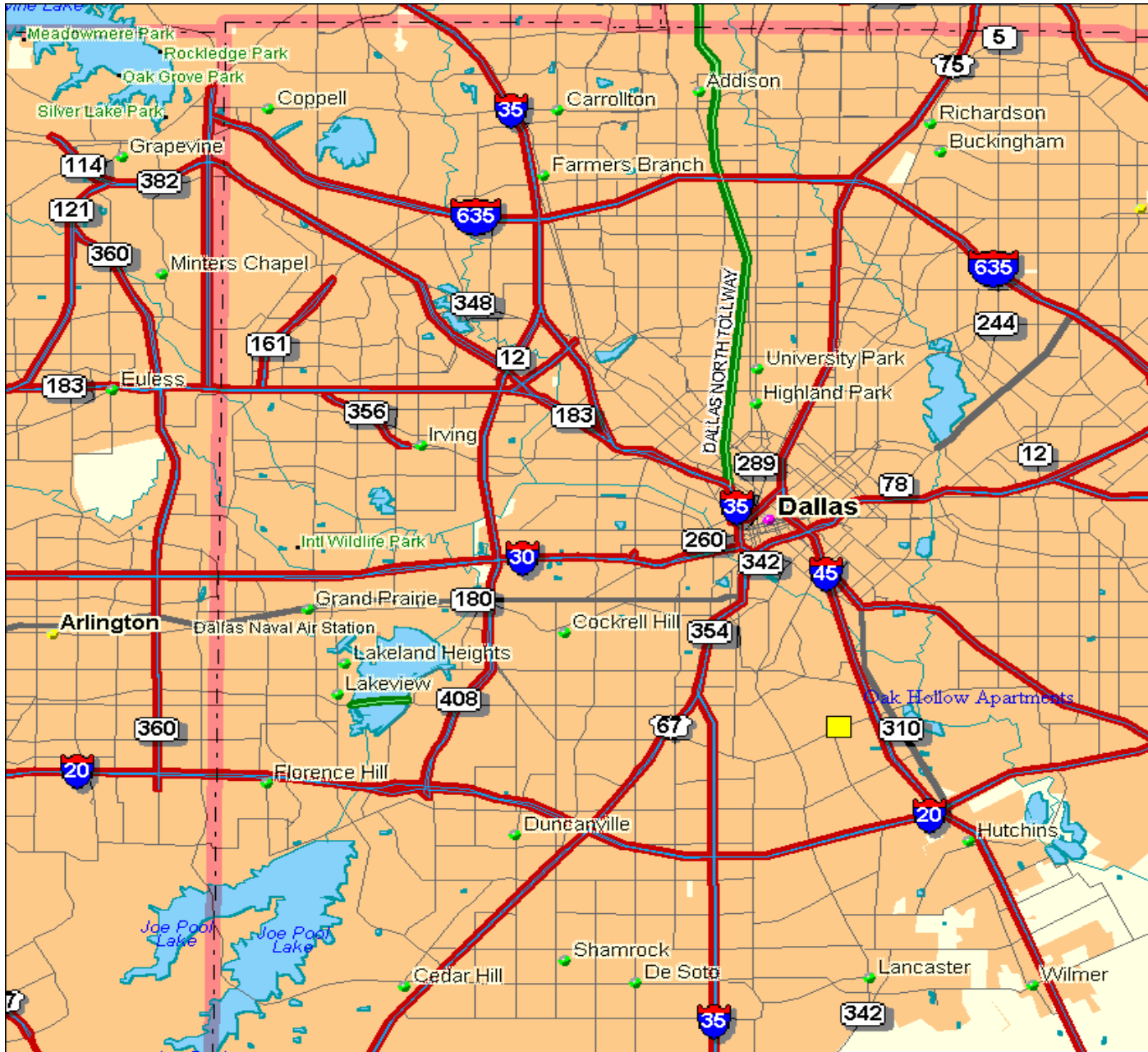
**MAXIMUM INCOME & RENT CALCULATIONS**  
**(ADJUSTED FOR HOUSEHOLD SIZE) - 2001**

MSA/Coun **Dallas** Area Median Family **\$64,400**  
ty: **Income (Annual):**

<b>ANNUALLY</b>				<b>MONTHLY</b>							
<b>Maximum Allowable Household Income to Qualify for Set-Aside units under the Program Rules</b>				<b>Maximum Total Housing Expense Allowed based on Household Income (Includes Rent &amp; Utilities)</b>			<b>Utility Allowance by Unit Type (provided by the local PHA)</b>	<b>Maximum Rent that Owner is Allowed to Charge on the Set-Aside Units (Rent Cap)</b>			
# of Persons	<b>At or Below</b>			Unit Type	<b>At or Below</b>			<b>At or Below</b>			
	50%	60%	80%		50%	60%		80%	50%	60%	80%
1	\$ 22,550	\$ 27,060	\$ 36,050	Efficiency	\$ 563	\$ 676	\$ 901	\$ 39.00	\$ 524	\$ 637	\$ 862
2	25,750	30,900	41,200	1-Bedroom	603	724	965	47.00	556	677	918
<b>3</b>	<b>29,000</b>	<b>34,800</b>	<b>46,350</b>	<b>2-Bedroom</b>	<b>725</b>	<b>870</b>	<b>1,158</b>	<b>61.00</b>	<b>664</b>	<b>809</b>	<b>1,097</b>
4	32,200	38,640	51,500	3-Bedroom	837	1,005	1,339	71.00	766	934	1,268
5	34,800	41,760	55,650	4-Bedroom	933	1,120	1,493	86.00	847	1,034	1,407
6	37,350	44,820	59,750	5-Bedroom	1,030	1,236	1,648	97.00	944	1,150	1,562
7	39,950	47,940	63,900								
8	42,500	51,000	68,000								
<b>FIGURE 1</b>				<b>FIGURE 2</b>			<b>FIGURE 3</b>	<b>FIGURE 4</b>			

# Oak Hollow Apartments

## EXHIBIT 8

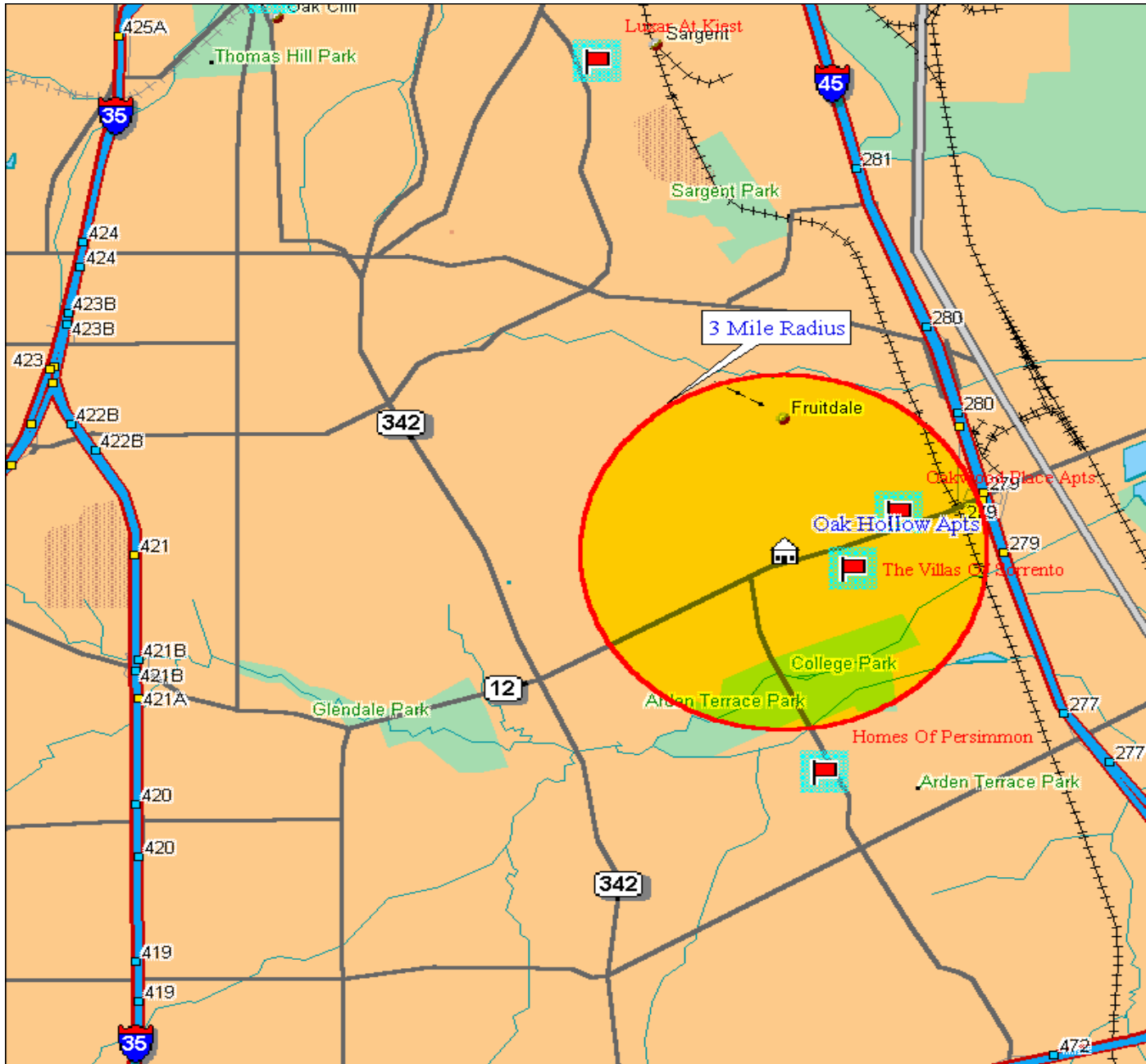


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# Oak Hollow Apartments

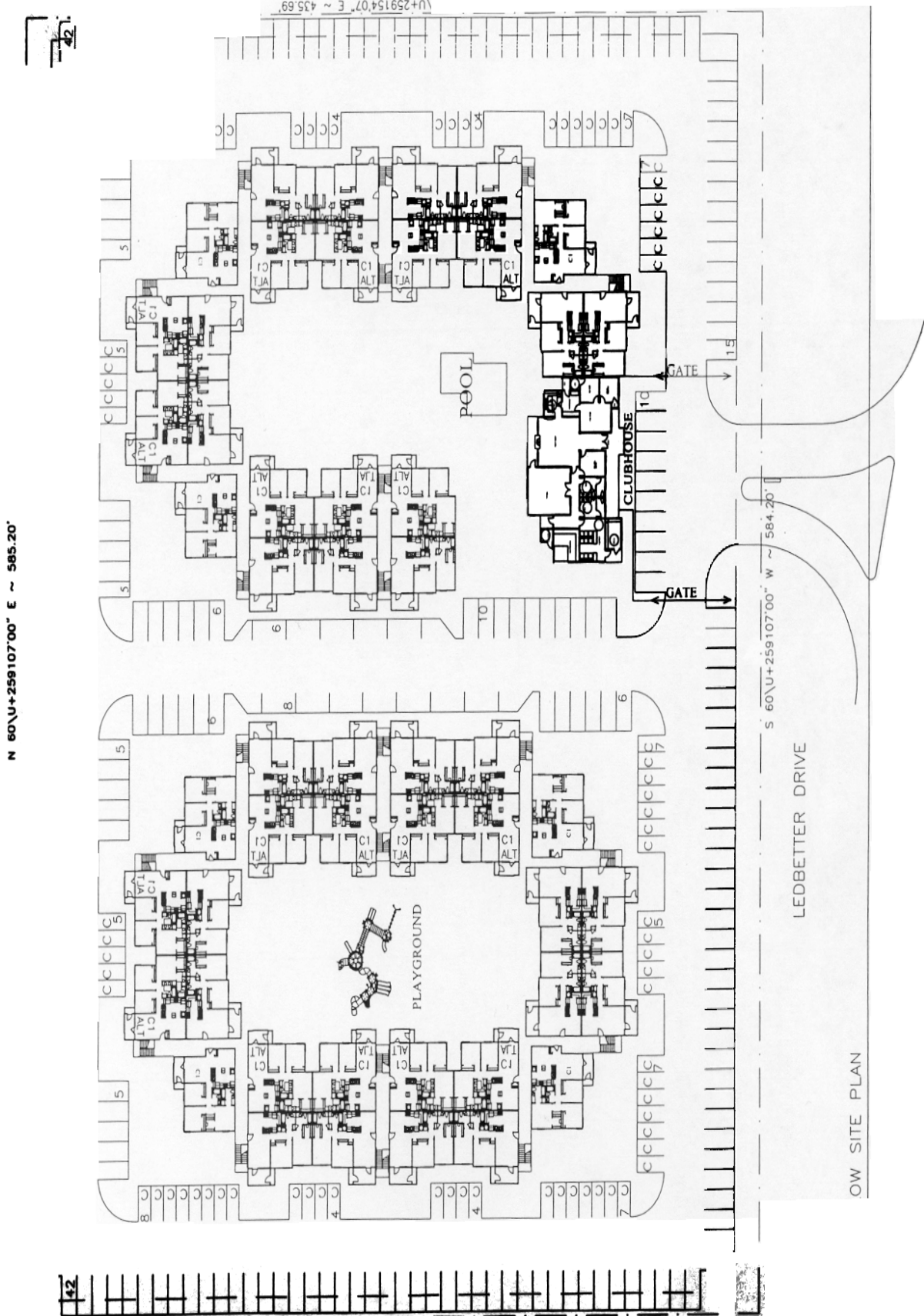
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# Oak Hollow Apartments

## EXHIBIT 8

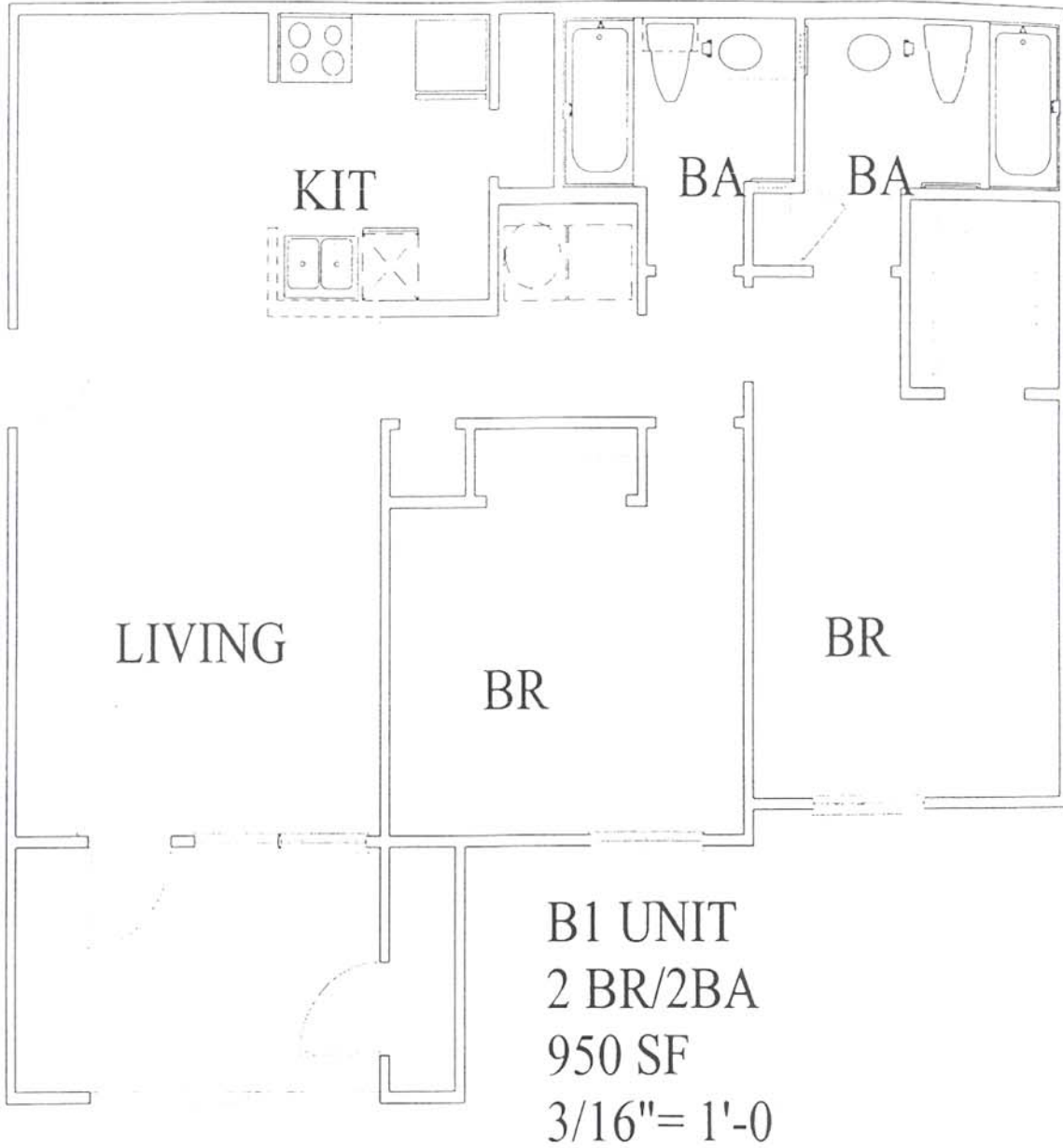


**Oak Hollow Apartments**

**EXHIBIT 8**

Oak Hollow Apartments

EXHIBIT 8



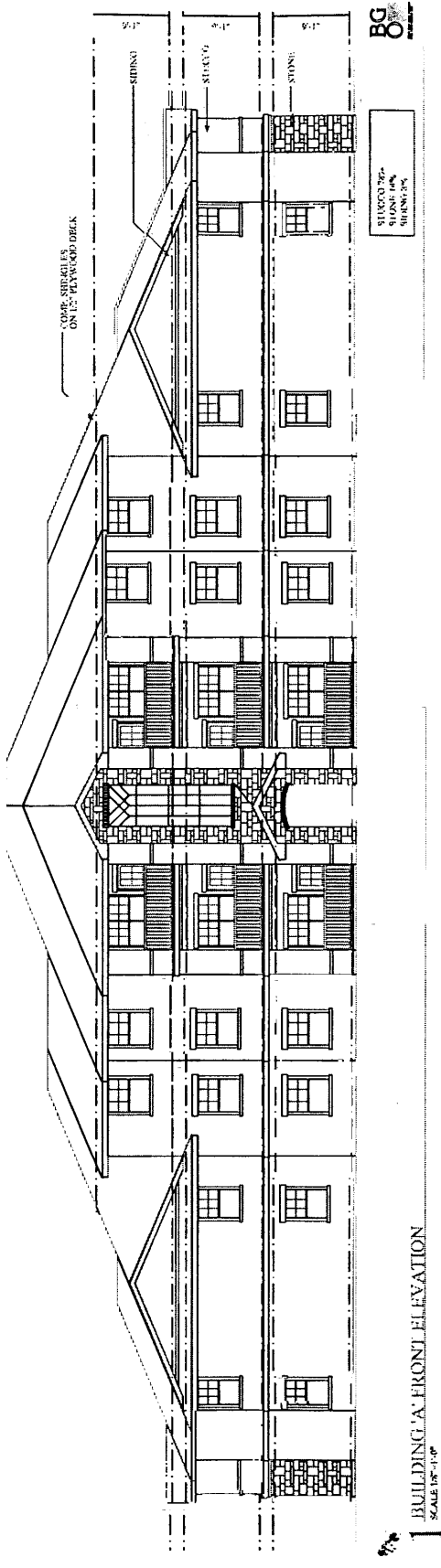
Oak Hollow Apartments

EXHIBIT 8



# Oak Hollow Apartments

## EXHIBIT 8

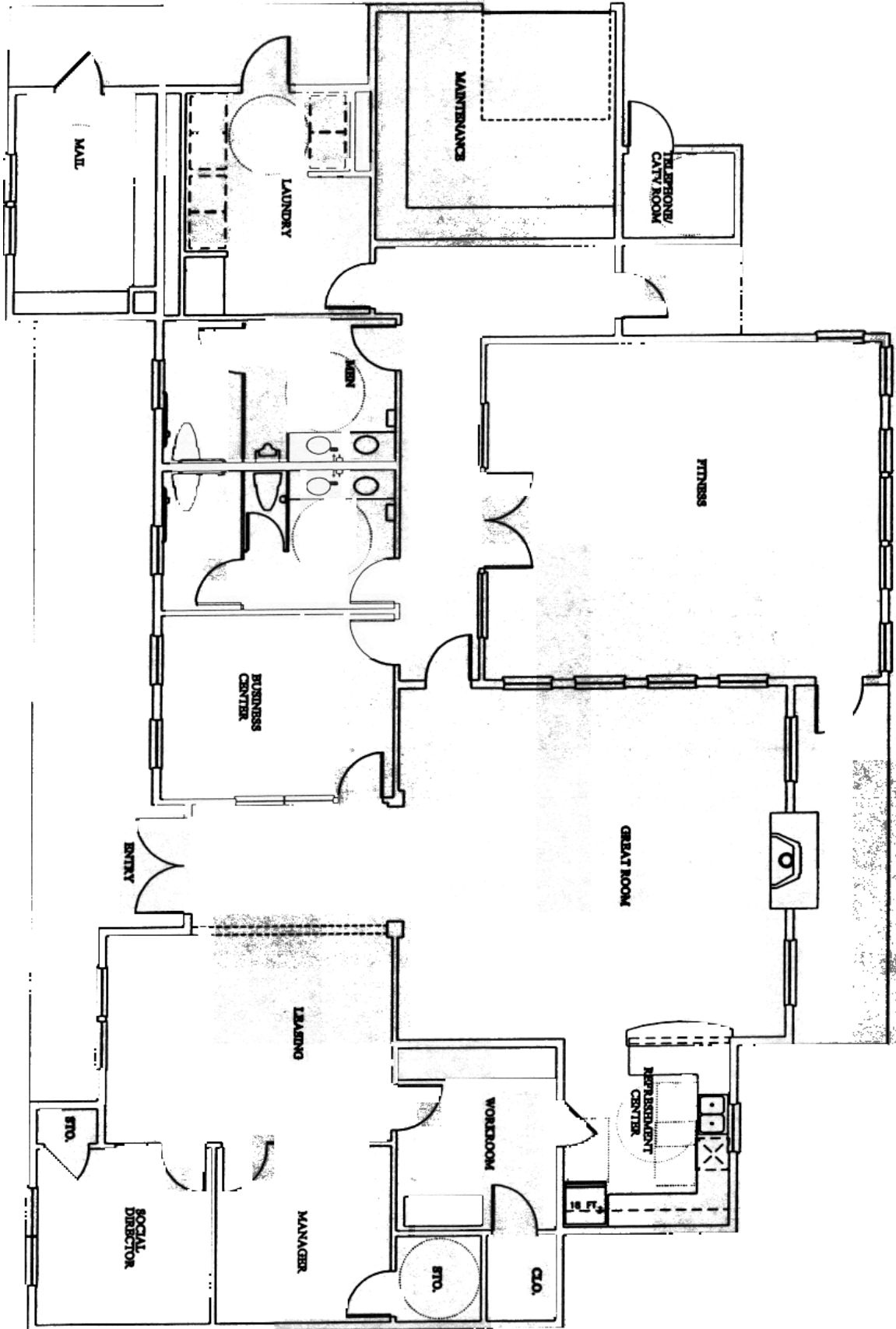


**Oak Hollow Apartments**

**EXHIBIT 8**

Oak Hollow Apartments

EXHIBIT 8





# Oak Hollow Apartments

## EXHIBIT 8

### Participation of Women and Minorities - Department Advisors

#### A. Bond Counsel

Vinson & Elkins L.L.P. ("V&E"). V&E pursues a policy of recruiting and hiring that encourages women and minorities to join the firm. V&E is committed to equal employment opportunities without regard to age, race, sex, color, religion, national origin or handicapped status, consistent with federal and state laws.

The minority and female representation within the firm as of March 28, 2000 was as follows:

<b>Legal Personnel</b>
------------------------

Number of Attorneys Employed:	866
Male	610
Female	256
Number of Minority Attorneys Employed:	69
Black	23
Hispanic	29
Asian	16
Native American	1
Number of Minority Law Clerks and/or Paralegals Employed:	15
Black	4
Hispanic	8
Asian	3
Native American	0
Number of Women Law Clerks and/or Paralegals Employed:	120
Number of Law Clerks and/or Paralegals Employed:	147
Number of Minority Legal Personnel Hired During the Last 12 Months:	
Attorneys	30
Law Clerks/Paralegals	4

<b>Non-Legal Personnel</b>
----------------------------

Number of Non-Legal Personnel Employed:	1086
Male	202
Female	884
Black	144
Hispanic	133
Asian	47
Native American	2

## Oak Hollow Apartments

### EXHIBIT 8

#### B. Financial Advisor

Dain Rauscher, Inc. It is the policy of Dain Rauscher, Inc. to provide equal opportunity to all persons without regard to race, color, national origin, religion, political affiliation, disability, marital status, sex or age. This policy will affect all employment practices, including (but not limited to) recruiting selection, placement, transfer, promotion, training, compensation, other benefits, layoff and recall, terminations, and in all company sponsored activities.

It is the responsibility of each member of management at every level throughout Dain Rauscher, Inc. to ensure the implementation of this policy and support it through positive leadership and personal example.

It is the responsibility of each employee to create an atmosphere on the job which is conducive to this policy.

Current information regarding Dain Rauscher, Inc.'s women and minority employment status is shown on the following page.

## Oak Hollow Apartments

### EXHIBIT 8

#### DAIN RAUSCHER, INC. - EQUAL EMPLOYMENT OPPORTUNITY

#### NUMBER OF EMPLOYEES

As of January 2, 2001

JOB CATEGORIES	TOTAL EMPLOYEES	TOTAL BY GENDER		WHITE		AMERICAN INDIAN		BLACK		HISPANIC		ASIAN OR PACIFIC ISLANDER		UNIDENTIFIED AT THIS TIME	
		Male	Female	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female
Officials and Managers	536	311	225	258	191	1	0	6	3	1	2	3	2	2	1
Professionals	909	593	315	535	275	0	1	8	10	6	10	32	17	12	2
Technicians	31	24	7	20	5	0	0	1	1	1	0	1	0	1	1
Sales Workers	1,280	1,047	233	1,009	227	1	0	6	0	6	5	12	1	13	0
Non Exempt	1,263	260	1,002	209	868	2	7	25	51	4	32	11	19	9	25
<b>TOTAL</b>	<b>4,019</b>	<b>2,235</b>	<b>1,782</b>	<b>1,822</b>	<b>1,566</b>	<b>4</b>	<b>8</b>	<b>46</b>	<b>65</b>	<b>18</b>	<b>49</b>	<b>59</b>	<b>39</b>	<b>37</b>	<b>29</b>

## Oak Hollow Apartments

### EXHIBIT 8

#### C. Disclosure Counsel - McCall, Parkhurst & Horton, L.L.P

##### AFFIRMATIVE ACTION

McCall, Parkhurst & Horton L.L.P. maintains employment practices that are nondiscriminatory. In addition, the firm is committed to taking affirmative action to assure equal employment opportunities to all groups within the work force. These affirmative action goals relate to all aspects of the employment process including recruitment, retention as an employee, training and job description, compensation and advancement. The firm will continue to implement and maintain its affirmative action program to mirror the representation in the work force based on race, color and gender, with particular emphasis on employees for legal positions within the firm.

## Oak Hollow Apartments

### EXHIBIT 8

#### DISCLOSURE COUNSEL - MCCALL, PARKHURST & HORTON, L.L.P BREAKDOWN OF EMPLOYMENT AS OF MARCH 1, 2001.

##### Legal Personnel

Number of Attorneys:	18
Male Attorneys	16
Female Attorneys	2
Number of Minority Attorneys:	
African American Attorneys	1
Hispanic Attorneys	2

##### Non-Legal Personnel

Number of Law Clerks and/or Paralegals employed:	2
Male Law Clerks/Paralegals	0
Female Law Clerks/Paralegals	2
Number of Support Personnel (excluding Law Clerks and Paralegals) employed:	20
Male	2
Female	18
African American	1
Hispanic	4
Other Minority (Native American)	1

McCall, Parkhurst & Horton L.L.P. provides legal representation in the field of public finance. Due to recent actions by Congress and the current economy of the State of Texas, the firm's personnel needs have diminished considerably in recent years. Since January, 1986, the firm has only added six attorneys, and two paralegals to its professional staff. The attorney positions were filled with two African American attorneys (one of whom left the firm to establish an investment banking firm), two Hispanic attorneys, and two female attorneys and the paralegal positions were filled with women. Of these six attorneys, five remain employed by the firm. The firm expects to make similar efforts to recruit women and minorities at such time as the need arises for additional attorneys and staff.

##### Affirmative Action Statement

McCall, Parkhurst & Horton L.L.P. will expend the firm's energy and resources in its efforts to recruit, hire and promote women and minorities in sufficient numbers to meet or exceed their proportions in the Texas work force.

## Oak Hollow Apartments

### EXHIBIT 8

#### D. WELLS FARGO BANK TEXAS, NA, CORPORATE TRUST SERVICES

Wells Fargo's Affirmative Action Policy: It is the policy of Wells Fargo Bank Texas, N.A. to afford equal opportunity to all individuals regardless of race, color, national origin, sex, religion, age, handicap or veteran status. The purpose of this policy directive is to reaffirm our established policy on equal employment opportunity.

Wells Fargo Bank Texas, N.A. is strongly committed to equality of opportunity as a basic goal of the American society. Therefore, the Bank will take affirmative action to ensure that we will: (1) recruit, hire, train, and promote persons in all job titles without regard to race, color, national origin, sex, religion, age, handicap or veteran status; (2) base decisions on employment so as to further the principal of equal employment opportunity; (3) ensure that promotion decisions are in accord with principals of equal employment opportunity by imposing only valid requirements for promotional opportunities; and (4) ensure that all personnel actions such as compensation, benefits, transfers, layoffs, return from layoff, Bank-sponsored training, education, tuition assistance, or social or recreational programs will be administered without regard to race, color, national origin, religion, age, sex, handicap or veteran status.

The successful achievement of a non-discriminatory employment program requires a maximum of cooperation between management and employees. In fulfilling its part in this cooperative effort, management is obliged to lead the way by establishing and implementing affirmative procedures and practices which will ensure our objectives; namely equal employment opportunity for all.

**Reed Road South Apartments**

**EXHIBIT 8  
WELLS FARGO BANK TEXAS, NA, CORPORATE TRUST SERVICES  
EQUAL EMPLOYMENT OPPORTUNITY  
NUMBER OF EMPLOYEES  
AS OF DECEMBER 2000**

<b>Job Categories</b>	<b>Employees</b>	<b>Male</b>					<b>Female</b>			
		<b>White</b>	<b>Black</b>	<b>Hispanic</b>	<b>Asian</b>	<b>Indian</b>	<b>White</b>	<b>Black</b>	<b>Hispanic</b>	<b>As</b>
Officials and Managers	68	30	1	1	1	0	32	2	1	
Professionals	277	115	7	3	12	0	119	12	4	
Technicians	1	1	0	0	0	0	0	0	0	
Sales Workers	10	7	0	0	0	0	3	0	0	
Office and Clerical	342	76	25	4	11	1	135	56	6	
Operatives (Semi Skilled)	0	0	0	0	0	0	0	0	0	
<b>Total</b>	<b>698</b>	<b>229</b>	<b>33</b>	<b>8</b>	<b>24</b>	<b>1</b>	<b>289</b>	<b>70</b>	<b>11</b>	

**Oak Hollow Apartments**

**EXHIBIT 8**

**Public/TEFRA Hearing**

Public Hearing scheduled for November 6, 2001 at 7:00 at the City  
Dallas Public Library, Dallas West meeting room, 1515 Young  
Street, Dallas, Texas 75201

Transcript of the Public Hearing will be provided as soon as available.



# Oak Hollow Apartments

## EXHIBIT 8 Compliance Status Summary

ID# 01435  
 Project Name Oak Hollow Apartments  
 Address 2965 E. Ledbetter  
 City Dallas, Texas 75216

Type Funding  
 LIHTC 9%  
 LIHTC 4%  
 BOND  
 HOME  
 HTF  
 HSG. INFRAS.

Owner Name Oak Hollow Housing, L.P.  
 Contact Brian Potashnik

Development Team Brian Potashnik Role General Partner

Boxes marked if applicable	Type of Participation	Status(*)
<input checked="" type="checkbox"/>	Projects monitored by Dept. (compliance status report(s) attached)	Material Non-Compliance N/A <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes <input type="checkbox"/>
<input type="checkbox"/>	Projects monitored by other states (National Previous Participation and Background Certification(s) attached)	Issues of Compliance N/A <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/>
<input type="checkbox"/>	Audit Resolution (Summary of finding(s) attached if applicable)	Issues of Compliance N/A <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> <i>- single Audit not required.</i>
<input type="checkbox"/>	Program Monitoring (Summary of finding(s) attached if applicable)	Issues of Compliance N/A <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> <i>None</i>

Completed by: (signatures required from each compliance area)

Date

CMCM Sara Campbell Newton  
 CMAD Jerry Tarrington  
 CMPM Ralph W. ...

10-23-2001  
10-24-2001  
10/23/2001

(\*) Status column will indicate: 1) Yes, if Material Non-compliance score is 30 or more points or unresolved compliance issues, 2) No, if no compliance issues, 3) N/A, if a review has not been conducted or the results are pending or another state failed to respond.

## Oak Hollow Apartments

### EXHIBIT 8

<b>Properties Monitored by the Department</b>		
<i>Application ID # <u>01406</u></i>		
Oak Hollow Apartments, Dallas		
<b>ID#</b>	<b>Project Name</b>	<b>Score</b>
70028/94032	Estrada Apartments	10
70037/94038	Melody Place Apartments	0
70039/95049	Melody Village Apartments	3
96014	Courtyards at Kirnwood	0
96015	The Birchwood Apartments	14
98002	The Village at Johnson Creek	3
98032	Villas at Redmond	1
00014T	The Oaks at Hampton	N/A
00029T	Parks at Westmoreland	N/A
01409	Bluffview	N/A
01408	Knollwood Villas	N/A

## Oak Hollow Apartments

### EXHIBIT 8

#### RESOLUTION NO. 01-51

RESOLUTION AUTHORIZING AND APPROVING THE ISSUANCE, SALE AND DELIVERY OF MULTIFAMILY HOUSING MORTGAGE REVENUE BONDS (OAK HOLLOW APARTMENTS) SERIES 2001; APPROVING THE FORM AND SUBSTANCE AND AUTHORIZING THE EXECUTION AND DELIVERY OF DOCUMENTS AND INSTRUMENTS PERTAINING THERETO; AUTHORIZING AND RATIFYING OTHER ACTIONS AND DOCUMENTS; AND CONTAINING OTHER PROVISIONS RELATING TO THE SUBJECT

WHEREAS, the Texas Department of Housing and Community Affairs (the "Department") has been duly created and organized pursuant to and in accordance with the provisions of Chapter 2306, Texas Government Code, as amended (the "Act"), for the purpose, among others, of providing a means of financing the costs of residential ownership, development and rehabilitation that will provide decent, safe, and affordable living environments for individuals and families of low and very low income (as defined in the Act) and families of moderate income (as described in the Act and determined by the Governing Board of the Department (the "Board") from time to time); and

WHEREAS, the Act authorizes the Department: (a) to make mortgage loans to housing sponsors to provide financing for multifamily residential rental housing in the State of Texas (the "State") intended to be occupied by individuals and families of low and very low income and families of moderate income, as determined by the Department; (b) to issue its revenue bonds, for the purpose, among others, of obtaining funds to make such loans and provide financing, to establish necessary reserve funds and to pay administrative and other costs incurred in connection with the issuance of such bonds; and (c) to pledge all or any part of the revenues, receipts or resources of the Department, including the revenues and receipts to be received by the Department from such multi-family residential rental project loans, and to mortgage, pledge or grant security interests in such loans or other property of the Department in order to secure the payment of the principal or redemption price of and interest on such bonds; and

WHEREAS, the Board has determined to authorize the issuance of the Texas Department of Housing and Community Affairs Multifamily Housing Mortgage Revenue Bonds (Oak Hollow Apartments) Series 2001 (the "Bonds"), pursuant to and in accordance with the terms of a Trust Indenture (the "Indenture") by and between the Department and Wells Fargo Bank Texas, N.A. (the "Trustee"), for the purpose of obtaining funds to finance the Project (defined below), all under and in accordance with the Constitution and laws of the State of Texas; and

WHEREAS, the Department desires to use the proceeds of the Bonds to fund a mortgage loan to Oak Hollow Housing, L.P., a Texas limited partnership (the "Borrower"), in order to finance the cost of acquisition, construction and equipping of a qualified residential rental project described on Exhibit A attached hereto (the "Project") located within the State of Texas required by the Act to be occupied by individuals and families of low and very low income and families of moderate income, as determined by the Department; and

WHEREAS, the Board, by resolution adopted on October 13, 2000, declared its intent to issue its revenue bonds to provide financing for the Project; and

WHEREAS, it is anticipated that the Department, the Borrower and the Trustee will execute and deliver a Loan Agreement (the "Loan Agreement") pursuant to which (i) the Department will agree to make a mortgage loan funded with the proceeds of the Bonds (the "Loan") to the Borrower to enable the Borrower to finance the cost of acquisition and construction of the Project and related costs, and (ii) the Borrower will execute and deliver to the Department a promissory note (the "Note") in an original principal amount equal to the original aggregate principal amount of the Bonds, and providing for payment of interest on such principal amount equal to the interest on the Bonds and to pay other costs described in the Agreement; and

## Oak Hollow Apartments

### EXHIBIT 8

WHEREAS, it is anticipated that the Note will be secured by a Deed of Trust and Security Agreement (with Power of Sale) (the "Deed of Trust") from the Borrower for the benefit of the Department and the Trustee; and

WHEREAS, the Department's interest in the Loan, including the Note and the Deed of Trust, will be assigned to the Trustee pursuant to an Assignment of Deed of Trust Documents and an Assignment of Note (collectively, the "Assignments") from the Department to the Trustee; and

WHEREAS, the Board has determined that the Department, the Borrower and Charter Municipal Mortgage Acceptance Company, a Delaware business trust, will execute a Bond Purchase Agreement (the "Purchase Agreement"), with respect to the sale of the Bonds; and

WHEREAS, the Board has determined that the Department, the Trustee and the Borrower will execute a Regulatory and Land Use Restriction Agreement (the "Regulatory Agreement"), with respect to the Project which will be filed of record in the real property records of Dallas County; and

WHEREAS, the Board has determined that the Department, the Trustee and First Union National Bank, a national banking association, will enter into an Intercreditor Agreement (the "Intercreditor Agreement") that will outline the interests of the various parties with respect to the Indenture, Loan Agreement, Deed of Trust and Regulatory Agreement; and

WHEREAS, the Board has examined proposed forms of the Indenture, the Loan Agreement, the Assignments, the Regulatory Agreement, the Purchase Agreement and the Intercreditor Agreement, all of which are attached to and comprise a part of this Resolution; has found the form and substance of such documents to be satisfactory and proper and the recitals contained therein to be true, correct and complete; and has determined, subject to the conditions set forth in Section 1.11, to authorize the issuance of the Bonds, the execution and delivery of such documents and the taking of such other actions as may be necessary or convenient in connection therewith; NOW, THEREFORE,

BE IT RESOLVED BY THE GOVERNING BOARD OF THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS:

#### ARTICLE V

##### ISSUANCE OF BONDS; APPROVAL OF DOCUMENTS

Section 5.1--Issuance, Execution and Delivery of the Bonds. That the issuance of the Bonds is hereby authorized, under and in accordance with the conditions set forth herein and in the Indenture, and that, upon execution and delivery of the Indenture, the authorized representatives of the Department named in this Resolution each are authorized hereby to execute, attest and affix the Department's seal to the Bonds and to deliver the Bonds to the Attorney General of the State of Texas for approval, the Comptroller of Public Accounts of the State of Texas for registration and the Trustee for authentication (to the extent required in the Indenture), and thereafter to deliver the Bonds to the order of the initial purchaser thereof.

Section 5.2--Interest Rate, Principal Amount, Maturity and Price. That: (i) the interest rate on the Bonds shall be (A) from the date of issuance through, and including, February 28, 2003, 7.9% per annum, and (B) thereafter until the maturity date thereof, 7.2%; (ii) the aggregate principal amount of the Bonds shall be \$8,625,000; and (iii) the final maturity of the Bonds shall occur on December 1, 2041.

Section 5.3--Approval, Execution and Delivery of the Indenture. That the form and substance of the Indenture are hereby approved, and that the authorized representatives of the Department named in this Resolution each are authorized hereby to execute, attest and affix the Department's seal to the Indenture and to deliver the Indenture to the Trustee.

## Oak Hollow Apartments

### EXHIBIT 8

Section 5.4--Approval, Execution and Delivery of the Loan Agreement and Regulatory Agreement. That the form and substance of the Loan Agreement and the Regulatory Agreement are hereby approved, and that the authorized representatives of the Department named in this Resolution each are authorized hereby to execute, attest and affix the Department's seal to the Loan Agreement and the Regulatory Agreement and deliver the Loan Agreement and the Regulatory Agreement to the Borrower and the Trustee.

Section 5.5--Acceptance of the Deed of Trust and Note. That the Deed of Trust and the Note are hereby accepted by the Department.

Section 5.6--Approval, Execution and Delivery of the Assignments. That the form and substance of the Assignments are hereby approved and that the authorized representatives of the Department named in this Resolution each are hereby authorized to execute, attest and affix the Department's seal to the Assignments and to deliver the Assignments to the Trustee.

Section 5.7--Approval, Execution and Delivery of the Purchase Agreement. That the form and substance of the Purchase Agreement are hereby approved, and that the authorized representatives of the Department named in this Resolution each are authorized hereby to execute and deliver the Purchase Agreement.

Section 5.8--Approval, Execution and Delivery of the Intercreditor Agreement. That the form and substance of the Intercreditor Agreement are hereby approved, and that the authorized representatives of the Department named in this Resolution each are authorized hereby to execute, attest and deliver the Intercreditor Agreement.

Section 5.9--Taking of Any Action; Execution and Delivery of Other Documents. That the authorized representatives of the Department named in this Resolution each are authorized hereby to take any actions and to execute, attest and affix the Department's seal to, and to deliver to the appropriate parties, all such other agreements, commitments, assignments, bonds, certificates, contracts, documents, instruments, releases, financing statements, letters of instruction, notices of acceptance, written requests and other papers, whether or not mentioned herein, as they or any of them consider to be necessary or convenient to carry out or assist in carrying out the purposes of this Resolution.

Section 5.10--Exhibits Incorporated Herein. That all of the terms and provisions of each of the documents listed below as an exhibit shall be and are hereby incorporated into and made a part of this Resolution for all purposes:

- Exhibit B-Indenture
- Exhibit C-Loan Agreement
- Exhibit D-Regulatory Agreement
- Exhibit E -Assignments
- Exhibit F-Purchase Agreement
- Exhibit G - Intercreditor Agreement

Section 5.11--Power to Revise Form of Documents. That notwithstanding any other provision of this Resolution, the authorized representatives of the Department named in this Resolution each are authorized hereby to make or approve such revisions in the form of the documents attached hereto as exhibits as, in the judgment of such authorized representative or authorized representatives, and in the opinion of Vinson & Elkins L.L.P., Bond Counsel to the Department, may be necessary or convenient to carry out or assist in carrying out the purposes of this Resolution, such approval to be evidenced by the execution of such documents by the authorized representatives of the Department named in this Resolution.

Section 5.12--Authorized Representatives. That the following persons are each hereby named as authorized representatives of the Department for purposes of executing, attesting, affixing the

## Oak Hollow Apartments

### EXHIBIT 8

Department's seal to, and delivering the documents and instruments and taking the other actions referred to in this Article I: Chairman of the Board, Executive Director of the Department, Acting Executive Director of the Department, Deputy Executive Director of the Department, Chief Financial Officer of the Department, Director of Bond Finance, Director of Multifamily Finance of the Department, the Secretary of the Board, and the Assistant Secretary of the Board.

Section 5.13--Conditions Precedent. That the issuance of the Bonds shall be further subject to, among other things: (a) the Project's meeting all underwriting criteria of the Department, to the satisfaction of the Executive Director or the Acting Executive Director; and (b) the execution by the Borrower and the Department of contractual arrangements satisfactory to the Department staff requiring that community service programs will be provided at the Project.

### ARTICLE VI

#### APPROVAL AND RATIFICATION OF CERTAIN ACTIONS

Section 6.1--Approval and Ratification of Application to Texas Bond Review Board. That the Board hereby ratifies and approves the submission of the application for approval of state bonds to the Texas Bond Review Board on behalf of the Department in connection with the issuance of the Bonds in accordance with Chapter 1231, Texas Government Code.

Section 6.2--Approval of Submission to the Attorney General of Texas. That the Board hereby authorizes, and approves the submission by the Department's Bond Counsel to the Attorney General of the State of Texas, for his approval, of a transcript of legal proceedings relating to the issuance, sale and delivery of the Bonds.

Section 6.3--Certification of the Minutes and Records. That the Secretary and the Assistant Secretary of the Board hereby are severally authorized to certify and authenticate minutes and other records on behalf of the Department for the Bonds and all other Department activities.

Section 6.4--Authority to Invest Proceeds. That the Department is authorized to invest and reinvest the proceeds of the Bonds and the fees and revenues to be received in connection with the financing of the Project in accordance with the Indenture and to enter into any agreements relating thereto only to the extent permitted by the Indenture.

Section 6.5--Approving Initial Rents. That the initial maximum rent charged by the Borrower for 100% of the units of the Project shall not exceed the amounts attached as Exhibit F to the Loan Agreement and shall be annually redetermined by the Issuer as stated in Section 2.3(s) of the Loan Agreement.

Section 6.6--Ratifying Other Actions. That all other actions taken by the Executive Director or Acting Executive Director of the Department and the Department staff in connection with the issuance of the Bonds and the financing of the Project are hereby ratified and confirmed.

### ARTICLE VII

#### CERTAIN FINDINGS AND DETERMINATIONS

Section 7.1--Findings of the Board. That in accordance with Section 2306.223 of the Act, and after the Department's consideration of the information with respect to the Project and the information with respect to the proposed financing of the Project by the Department, including but not limited to the information submitted by the Borrower, independent studies commissioned by the Department, recommendations of the Department staff and such other information as it deems relevant, the Board hereby finds:

## Oak Hollow Apartments

### EXHIBIT 8

(a) Need for Housing Development.

(i) that the Project is necessary to provide needed decent, safe, and sanitary housing at rentals or prices that individuals or families of low and very low income or families of moderate income can afford,

(ii) the Borrower will supply well-planned and well-designed housing for individuals or families of low and very low income or families of moderate income,

(iii) the Borrower is financially responsible,

(iv) the financing of the Project is a public purpose and will provide a public benefit, and

(v) the Project will be undertaken within the authority granted by the Act to the housing finance division and the Borrower.

(b) Findings with Respect to the Borrower.

(i) that the Borrower, by operating the Project in accordance with the requirements of the Regulatory Agreement, will comply with applicable local building requirements and will supply well-planned and well-designed housing for individuals or families of low and very low income or families of moderate income, and

(ii) that the Borrower is financially responsible and has entered into a binding commitment to repay the loan made with the proceeds of the Bonds in accordance with its terms.

(c) Public Purpose and Benefits.

(i) that the Borrower has agreed to operate the Project in accordance with the Loan Agreement and the Regulatory Agreement, which require, among other things, that the Project be occupied by individuals and families of low and very low income and families of moderate income, and

(ii) that the issuance of the Bonds to finance the Project is undertaken within the authority conferred by the Act and will accomplish a valid public purpose and will provide a public benefit by assisting individuals and families of low and very low income and families of moderate income in the State of Texas to obtain decent, safe, and sanitary housing by financing the costs of the Project, thereby helping to maintain a fully adequate supply of sanitary and safe dwelling accommodations at rents that such individuals and families can afford.

Section 7.2--Determination of Eligible Tenants. That the Board has determined, to the extent permitted by law and after consideration of such evidence and factors as it deems relevant, the findings of the staff of the Department, the laws applicable to the Department and the provisions of the Act, that eligible tenants for the Project shall be (1) individuals and families of low and very low income, (2) persons with special needs, and (3) families of moderate income, with the income limits as set forth in the Loan Agreement and the Regulatory Agreement.

Section 7.3--Sufficiency of Mortgage Loan Interest Rate. That the Board hereby finds and determines that the interest rate on the loan established pursuant to the Loan Agreement will produce the amounts required, together with other available funds, to pay for the Department's costs of operation with respect to the Bonds and the Project and enable the Department to meet its covenants with and responsibilities to the holders of the Bonds.

# Oak Hollow Apartments

## EXHIBIT 8

Section 7.4--No Gain Allowed. That, in accordance with Section 2306.498 of the Act, no member of the Board or employee of the Department may purchase any Bond in the secondary open market for municipal securities.

Section 7.5--Waiver of Rules. That the Board hereby waives the rules contained in Sections 35 and 39, Title 10 of the Texas Administrative Code to the extent such rules are inconsistent with the terms of this Resolution and the bond documents authorized hereunder.

### ARTICLE VIII

#### GENERAL PROVISIONS

Section 8.1--Limited Obligations. That the Bonds and the interest thereon shall be limited obligations of the Department payable solely from the trust estate created under the Indenture, including the revenues and funds of the Department pledged under the Indenture to secure payment of the Bonds and under no circumstances shall the Bonds be payable from any other revenues, funds, assets or income of the Department.

Section 8.2--Non-Governmental Obligations. That the Bonds shall not be and do not create or constitute in any way an obligation, a debt or a liability of the State of Texas or create or constitute a pledge, giving or lending of the faith or credit or taxing power of the State of Texas. Each Bond shall contain on its face a statement to the effect that the State of Texas is not obligated to pay the principal thereof or interest thereon and that neither the faith or credit nor the taxing power of the State of Texas is pledged, given or loaned to such payment.

Section 8.3--Effective Date. That this Resolution shall be in full force and effect from and upon its adoption.

Section 8.4--Notice of Meeting. Written notice of the date, hour and place of the meeting of the Board at which this Resolution was considered and of the subject of this Resolution was furnished to the Secretary of State and posted on the Internet for at least seven (7) days preceding the convening of such meeting; that during regular office hours a computer terminal located in a place convenient to the public in the office of the Secretary of State was provided such that the general public could view such posting; that such meeting was open to the public as required by law at all times during which this Resolution and the subject matter hereof was discussed, considered and formally acted upon, all as required by the Open Meetings Act, Chapter 551, Texas Government Code, as amended; and that written notice of the date, hour and place of the meeting of the Board and of the subject of this Resolution was published in the Texas Register at least seven (7) days preceding the convening of such meeting, as required by the Administrative Procedure and Texas Register Act, Chapters 2001 and 2002, Texas Government Code, as amended. Additionally, all of the materials in the possession of the Department relevant to the subject of this Resolution were sent to interested persons and organizations, posted on the Department's website, made available in hard-copy at the Department, and filed with the Secretary of State for publication by reference in the Texas Register not later than seven (7) days before the meeting of the Board as required by Section 2306.032, Texas Government Code, as amended.

PASSED AND APPROVED this \_\_\_\_\_ day of November, 2002.

By: \_\_\_\_\_  
Chairman

Attest: \_\_\_\_\_  
Secretary



**Oak Hollow Apartments**

**EXHIBIT 8**

[SEAL]

## Reed Road South Apartments

### EXHIBIT 8 EXHIBIT A

#### DESCRIPTION OF PROJECT

Owner: Oak Hollow Housing, L.P., a Texas limited partnership

Project: The Project is a 153-unit multifamily facility to be known as Oak Hollow Apartments and to be located at 2965 E. Ledbetter, Dallas, Dallas County, Texas. The Project will include a total of eight (8) two and three story residential apartment buildings with a total of 157,050 net rentable square feet and an average unit size of 1,026 square feet. The unit mix will consist of:

75 two-bedroom/two-bath units

78 three-bedroom/two-bath units

153 Total Units

Unit sizes will range from approximately 950 square feet to approximately 1,100 square feet.

Common areas will include a picnic area, swimming pool, a children's play area, and a community center with kitchen facilities and laundry facilities. All ground units will be wheelchair accessible and all individual units will have washer/dryer connections.

*AGENDA ITEM NO. 4*  
**PROGRAMS COMMITTEE MEETING**  
**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**  
**Capitol Extension, 1400 Congress, Room E1.028, Austin, Texas**  
**November 14, 2001                      8:30 a.m.**

**AGENDA**

**CALL TO ORDER, ROLL CALL  
CERTIFICATION OF QUORUM**

Shadrick Bogany  
Chair

**PUBLIC COMMENT**

The Programs Committee of the Board of the Texas Department of Housing and Community Affairs will solicit Public Comment at the beginning of the meeting and will also provide for Public Comment on each agenda item after the presentation made by department staff and motions made by the Committee.

The Programs Committee of the Board of the Texas Department of Housing and Community Affairs will meet to consider and possibly act on the following:

- |        |                                                                                                                                                                                                                                                                                                                                  |                 |
|--------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------|
| Item 1 | Presentation, Discussion and Possible Approval of Minutes of Programs Committee Meeting of August 21, 2001                                                                                                                                                                                                                       | Shadrick Bogany |
| Item 2 | Presentation, Discussion and Possible Approval of Appointment of Members to the Advisory Committee for the Support of Individuals with Disabilities:<br>Ann Denton, Austin, Texas<br>Jean Langendorf, Cottonwood Shores, Texas<br>Jonas E. Schwartz, Austin, Texas<br>Wilma Crain, Amarillo, Texas<br>David Wood, Houston, Texas | Ruth Cedillo    |
| Item 3 | Presentation, Discussion and Possible Approval of Award Resulting From an Appeal of Staff Recommendations in the 2001 HOME Funding Cycle for Twin City Mission, No. 20010117, TBRA Activity, Score of 218, Region 7 for an Award of \$335,700 With 45 Units                                                                      | Ruth Cedillo    |

**REPORTS**

**ADJOURN**

Shadrick Bogany  
Chair

*Individuals who require auxiliary aids, services or translators for this meeting should contact Gina Esteves, ADA Responsible Employee, at 512-475-3943 or Relay Texas at 1-800-735-2989 at least two days before the meeting so that appropriate arrangements can be made.*

*To access this agenda and details on each agenda item in the board book, please visit our website at [www.tdhca.state.tx.us](http://www.tdhca.state.tx.us) or contact the Board Secretary, Delores Groneck, TDHCA, 507 Sabine, Austin, Texas 78701, 512-475-3934 and request the information.*

PROGRAMS COMMITTEE MEETING  
**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**  
1400 Congress, State Capitol Extension, Room E1.012, Austin, Texas 78701  
August 21, 2001                      8:30 a.m.

**Summary of Minutes**

**CALL TO ORDER, ROLL CALL  
CERTIFICATION OF QUORUM**

The Programs Committee Meeting of the Texas Department of Housing and Community Affairs of August 21, 2001 was called to order by Chairman Robert Brewer at 8:32 a.m. It was held at the State Capitol Extension, Room E1.012, Austin, Texas. Roll call certified a quorum was present.

Members present:  
Robert Brewer --Chair  
James Daross -- Member  
Shadrick Bogany -- Member

Staff of the Texas Department of Housing and Community Affairs was also present.

**PUBLIC COMMENT**

Mr. Brewer called for public comment and no one wished to give any comments.

**ACTION ITEMS**

**(1) Presentation, Discussion and Possible Approval of Minutes of Programs Committee Meeting of May 19, 2000 and May 30, 2001**

Motion made by James Daross and seconded by Shadrick Bogany to approve the minutes of the May 19, 2000 Programs Committee Meeting.  
Passed Unanimously

Motion made by James Daross and seconded by Shadrick Bogany to approve the minutes of the May 30, 2001 Programs Committee Meeting.  
Passed Unanimously

**Item 2 Presentation, Discussion and Possible Approval of FY2001 Housing Trust Fund Predevelopment Program Award for Ark-Tex Council of Governments, Texarkana, Texas**

Ms. Stacy Higgins, Senior Planner for the Housing Trust Fund, stated the Department issued a request for proposals in June, 2001, looking for up to two administrators for the predevelopment loan program in the Housing Trust Fund. These funds are available to nonprofits and units of local government for all predevelopment type activities. The goal is to help prepare these groups to eventually apply for predevelopment type funds. The Department received seven proposals in July 2001. Of these seven, Ark-Tex Council of Governments was the only group to score a perfect 100. Staff is recommending the full amount of \$840,000 for actual loans and \$100,000 for administrative fees to go to Ark-Tex COG. All proceeds from the loans, including interest, will be transferred back to the trust fund for future programs. Ark-Tex COG proposal had the most expansive marketing program of all the proposals received.

Motion made by James Daross and seconded by Shadrick Bogany to approve the Predevelopment Program Award for Ark-Tex Council of Governments, Texarkana, Texas in the amount of \$940,000 and to recommend approval to the full Board.  
Passed Unanimously

**Item 3 Presentation, Discussion and Possible Approval of Funding in the Amount of \$10,200 for Habitat for Humanity of El Paso, Inc. To Resolve an Incorrect Amount Award Approved for the 2001 Housing Trust Fund Capacity Building Program**

Ms. Stacy Higgins stated a situation was created where 64 proposals were received and staff had to input about ten different pieces of data for these proposals. One of the numbers was put in the system incorrectly and this action requested today is to correct this mistake and have the correct amount funded to Habitat for Humanity of El Paso, Inc. The additional amount of \$10,200 is to be added to the contract.

Motion made by James Daross and seconded by Shadrick Bogany to approve the funding in the amount of \$10,200 for Habitat for Humanity of El Paso, Inc. to resolve an incorrect amount award approved for the 2001 Housing Trust Fund Capacity Building Program and to recommend approval to the full Board.

Passed Unanimously

**Item 4 Presentation, Discussion and Possible Approval of the Letter of Endorsement for the Housing Bond and Credit Modernization and Fairness Act (S.677)**

Mr. Michael Lyttle, Director of Communications, stated the Department is a member of the National Council of State Housing Agencies, which is a national group of state housing and finance agencies across the country. NCSHA is actively involved in raising the awareness of this piece of legislation that is being considered by Congress. NCSHA is actively endorsing this legislation and they have asked the State of Texas to also support it.

This legislation will repeal the 10-year limit on bond yields and will save Texas approximately \$160 million per year in bond authority for the calculations received from NCSHA. According to information received, Texas could have as many as 2,200 additional home loans for qualified Texas in addition to what TDHCA now offers. Staff is requesting to send this letter to the Texas delegation and follow up with phone calls and raise the legislators awareness on this legislation.

The Governor's Office has no objection to the letter and they have elected to yield the matter to the TDHCA Board.

Motion made by Shadrick Bogany and seconded by James Daross to approve the Letter of Endorsement for the Housing Bond and Credit Modernization and Fairness Act (S.677) and for the Board Chairman to sign the letter and to recommend approval to the full Board.

Passed Unanimously

**Item 5 Presentation, Discussion and Possible Approval of HOME Program Award in the Amount of \$500,000 United Cerebral Palsy for Homebuyer Assistance and Rehabilitation**

Ms. Pam Morris, Director of Housing Finance Programs, stated in the Department's 2001 Consolidated Plan the language was added to endorse and support the initiative of the Home of Your Own Coalition. The partnership is comprised of state and local direct service providers, state government agencies, disability advocacy groups, community groups and statewide lending institutions. The funds are used for home ownership and for down payment assistance for people with disabilities. Parts of the funds are also used for the architect barrier removal program. Staff is recommending the \$500,000 award to be a 18-month contract, which includes an administrative fee of 6%. They will be serving about 20 households of persons with disabilities.

Motion made by Shadrick Bogany and seconded by James Daross to approve the HOME Program Award in the amount of \$500,000 for United Cerebral Palsy for Homebuyer Assistance and Rehabilitation and to recommend approval to the full Board.

Passed Unanimously

**Item 6 Presentation and Discussion of Appeals Policy**

Chairman Robert Brewer asked that the Committee table this item and present it directly to the Board.

Motion made by James Daross and seconded by Shadrick Bogany to table this item for the Committee and to present it directly to the Board.  
Passed Unanimously

## **REPORTS**

There were no report items presented.

## **ADJOURN**

The meeting adjourned at 8:43 a.m.

Respectfully submitted,

\_\_\_\_\_, Board Secretary

pcminaug/dg

*AGENDA ITEM NO. 4(A)*

**APPROVAL OF APPOINTMENT OF MEMBERS TO THE ADVISORY COMMITTEE FOR THE SUPPORT OF INDIVIDUALS WITH DISABILITIES**

At the September 2001 Board Meeting, the issue of the Advisory Committee for individuals with disabilities was discussed and a number of speakers requested that the Board move forward with establishing this committee and appointing members.

It is the recommendation of staff that the attached list of members be appointed to the Committee.

### Ann Denton

Ms. Denton is Director of the Austin Office of the Enterprise Foundation. She has served as the previous Director of the Substance Abuse and Homeless Services of the Austin Travis County MHMR Center and several other organizations. She has nearly twenty years experience working with and for people with disabilities. In this work, she has focused on the housing needs of people with disabilities, particularly people with serious mental illness.

Ms. Denton provides leadership at the state level as she helped to create and implement the Supported Housing Initiative, an activity of the Texas Department of Mental Health and Mental Retardation, which has been identified as a “best practice”. Her current office operates a statewide training and technical assistance project with the goal of increasing the number of housing units that are affordable, available and accessible for people with disabilities. The Austin office provides training to people with disabilities resulting in new leaders and measurable system change at the local level.

Ms. Denton has a BA from the State University of New York and a ME from Georgia State University.

### **Jean Langendorf**

Ms. Langendorf is the Project Director for Texas *Home of Your Own* Project of the United Cerebral Palsy Association of Texas. She is responsible for management of all aspects of this project, which includes the development, planning, implementation, and evaluation of innovative homeownership program for people with disabilities. She serves as staff to the Texas HOYO Coalition and develops policies on system change initiatives to increase accessibility of housing opportunities for people with disabilities.

She has served as manager of the Program Implementation Division of the Texas Commission on Alcohol and Drug Abuse Program. She has also been responsible for the planning and implementation of the Texas Nursing Home Project, and responsible for the administration and coordination of the City of El Paso’s Community Development Block Grant funded Social Services Programs.

Ms. Langendorf holds an AA in Sociology from South Oklahoma City Junior College and a BA in Sociology from the University of Texas.

### **Jonas Edward Schwartz**

Mr. Schwartz is the Program Services Manager for Advocacy, Inc. where he is responsible for directing and coordinating the day-to-day services of the Program Services Unit. His job includes the supervision of staff and the oversight of the unit budget. Additional duties include the monitoring of employment and housing policy as it pertains to people with disabilities. This unit as a whole is responsible for the development of public policy at the state level, which will positively impact the human services system.

He has served as the Program Administrator of the Texas Disability Policy Consortium where he was responsible for the implementation of grant work plan objectives and manage the budget. He coordinates meetings and facilitates training on legislative advocacy for consumers and families around the state. He also has worked for several other organizations and responsibilities included coordinating legislative, regulatory, advocacy and policy development activities.

Mr. Schwartz has a BS in Major Rehabilitation Services and Sociology from Stephen F. Austin State University and a MS Specialization in Rehabilitation Counseling from the University of North Texas.

### **Wilma Crain**

Ms. Crain is the Executive Director of the LIFE/RUN Centers for Independent Living and oversees the general operations of both the Amarillo and Lubbock centers. She has experience in being a housing coordinator and facilitated projects that increase housing opportunities for people with disabilities through networking, grant writing, and managing a coalition of volunteers.

She has served as the Housing Specialist for the LIFE/RUN Center for Independent Living and her duties included locating accessible housing for people with disabilities, providing information and referrals,



advocacy, peer support, as well as managing and overseeing the distribution of funds for the rental assistance program.

Ms. Crain has a MA in Psychology and a BA in English and Psychology from West Texas AM University.

**David Morris Wood**

Mr. Wood is Vice President, Community Development Officer of Bank One, Texas. His primary responsibilities are to coordinate and carry out community development activities for Bank One in the Houston and Abilene markets. He has worked as an Internal Auditor and managed a staff of fifteen professional auditors in five markets in Houston, Longview, Port Arthur, Corpus Christi and Brownsville. He conducted also conducted the initial review and subsequent investigation of major internal fraud.

Mr. Wood has been responsible for implementing compliance training programs for Houston area lenders, was responsible for the implementation of the first affordable housing mortgage lending team in the Houston market and was a major participant in the creation of the Houston Housing Partnership's affordable housing program.

Mr. Wood has a BBA and MBA in Accounting from Stephen F. Austin State University.

*AGENDA ITEM NO. 4(B)*  
**HOME Program Award to Twin City Mission**

Staff is presenting and requesting approval for an award recommendation for Twin City Mission (application number 20010117) due to a procedural error that occurred during the 2001 HOME application intake process.

**Background:**

Twin City Mission applied for a \$335,700 award under the 2001 HOME Program Special Needs Set Aside for Tenant Based Rental Assistance. When the program staff performed the data entry of the application was not marked as under the Special Needs Set Aside in the HOME database. As a result, the application was considered under the regional set aside for Tenant Based Rental Assistance and not recommended for funding due to the lack of funds available in Region 7. The applicant contacted our office on October 16, 2001 with questions about the set aside consideration and their score.

1. Staff review determined that the application was marked for consideration in the Special Needs Set Aside at initial receipt and should have been placed in the Special Needs Set Aside for consideration of funding. Upon competitive ranking in the Special Needs Set Aside, it was determined that the applicant would have received a recommendation for funding for the full amount requested (see attached *Revised Special Needs Set Aside Recommendations*). Due to this procedural error, as defined in the Department's Appeal Process (approved by the Board on October 17, 2001), staff is recommending an award from HOME Program de-obligated funds as allowed by the Department's De-obligation Policy.
2. The applicant also questioned their score of zero (0) for the cash reserves scoring element. The application guidelines required the following:

*“Bridge Loans or Cash Reserves -- These are funds that will be used by the applicant to pay program costs before reimbursements are received from the State of Texas HOME Program. Scoring points will only be awarded for amounts that are completely supported. Support must be evidenced by a firm commitment from a lending institution identifying the amount and applicant and/or a resolution from the applicant's governing body specifying the amount of cash reserves designated for the proposed HOME award. “*

While the budget completed and submitted with the application indicated cash reserves, the resolution from the applicant's governing body did not include a designation of cash reserves. Therefore, no points were awarded for the cash reserves scoring element and HOME management concurs that no procedural or mathematical error has occurred on this scoring factor.

*Recommendation:*

- **\$335,700 in project dollars and \$13,428 in administrative funds are recommended for funding from HOME deobligated funds for Twin City Mission (application number 20010117).**

**2001 HOME Program**  
**Revised Special Needs Set Aside Recommendations**

Not Subject to Regional Allocation Formula

**Total Amount available in Set-Aside: \$4,151,700**  
**Amount available from OCC Region 6: \$506,084**  
**Amount available from TBRA Region 7: \$ 5,381**  
**\$ 4,663,165**

Applicants below the bold line did not meet the threshold score requirement.

**Homebuyer Assistance:**

Application Number	Applicant Name	Activity	Region	Units Requested	AMFI targeted				Project \$'s Requested	Score	PJ	Project \$'s Recommended	Units Rec.
					30%	31-50%	51-60%	61-80%					
20010166	LAREDO-WEBB NHS	HBA	8B	20				20	\$ 300,000	106	N	\$ -	
<b>1</b>	<b>Total Applicants</b>			<b>20</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>20</b>	<b>\$ 300,000</b>			<b>\$ -</b>	<b>0</b>
<b>0.00%</b>	<b>Percent of Set Aside Recommended</b>								<b>Amount recommended: \$ -</b>				

**Owner Occupied Housing Assistance:**

Application Number	Applicant Name	Activity	Region	Units Requested	AMFI targeted				Project \$'s Requested	Score	PJ	Project \$'s Recommended	Units Rec.
					30%	31-50%	51-60%	61-80%					
20010158	CAPROCK CAA, INC.	OCC	01	10	8	2			\$ 500,000	260	N	\$ 500,000	10
20010218	ENCINAL, CITY OF	OCC	8B	10	10				\$ 500,000	258	N	\$ 500,000	10
20010146	SINTON, CITY OF	OCC	8B	4	4				\$ 220,000	255	N	\$ 220,000	4
20010141	MATADOR, CITY OF	OCC	01	4	4				\$ 220,000	254	N	\$ 220,000	4
20010111	BROWNWOOD, CITY OF	OCC	02	5	5				\$ 275,000	254	N	\$ 55,000	1
20010148	SAN PATRICIO, COUNTY OF	OCC	8B	9	9				\$ 495,000	253	N		
20010052	LAMESA, CITY OF	OCC	09	5	5				\$ 250,000	251	N		
20010145	MILES, CITY OF	OCC	02	4	4				\$ 220,000	250	N		
20010090	TAHOKA, CITY OF	OCC	01	5	5				\$ 250,000	249	N		
20010211	LASALLE COUNTY	OCC	8B	5	5				\$ 85,714	249	N		
20010053	NACOGDOCHES, CITY OF	OCC	05	10	10				\$ 500,000	247	N		
20010070	BOWIE, CITY OF	OCC	02	7	7				\$ 210,442	245	N		
20010021	GREENVILLE, CITY OF	OCC	03	8	8				\$ 400,000	244	N		
20010092	SUDAN, CITY OF	OCC	01	5	5				\$ 250,000	230	N		
20010023	LINDALE, CITY OF	OCC	04	6	6				\$ 300,000	228	N		
20010055	PALESTINE, CITY OF	OCC	04	8	8				\$ 400,000	222	N		
20010022	LUFKIN, CITY OF	OCC	05	10	10				\$ 500,000	214	N		
20010049	JUNCTION, CITY OF	OCC	09	5	5				\$ 250,000	213	N		
20010054	BIG LAKE, CITY OF	OCC	09	5	5				\$ 250,000	213	N		

**Owner Occupied Housing Assistance (continued):**

Number	Applicant Name	Activity	Region	Requested	30%	31-50%	51-60%	61-80%	Requested	Score	PJ	Recommended	Rec.
20010026	GILMER, CITY OF	OCC	04	6	6				\$ 300,000	211	N		
20010024	BELLMEAD, CITY OF	OCC	07	10	10				\$ 500,000	210	N		
20010050	SLATON, CITY OF	OCC	01	5	5				\$ 250,000	209	N		
20010089	SUNDOWN, CITY OF	OCC	01	5	5				\$ 250,000	209	N		
20010045	VAN HORN, CITY OF	OCC	10	9	9				\$ 495,000	206	N		
20010025	GLADEWATER, CITY OF	OCC	04	10	10				\$ 500,000	205	N		
20010051	WILLS POINT, CITY OF	OCC	04	6	6				\$ 300,000	202	N		
20010091	STAMFORD, CITY OF	OCC	02	5	5				\$ 250,000	201	N		
20010119	KLEBERG COUNTY	OCC	8B	31	24	7			\$ 250,000	177	N		
20010170	CAC OF VICTORIA	OCC	8A	9	9				\$ 495,000	171	N		
20010120	BROOKS COUNTY	OCC	8B	24	19	5			\$ 250,000	158	N		
20010203	SOUTHEAST TEXAS HFC	OCC	06	5	5				\$ 200,000	143	Y		
20010167	LAREDO-WEBB NHS	OCC	8B	14					\$ 500,000	123	Y		
<b>32</b>	<b>Total Applicants</b>			<b>264</b>	<b>236</b>	<b>14</b>	<b>0</b>	<b>0</b>	<b>\$ 10,616,156</b>			<b>\$ 1,495,000</b>	<b>29</b>

**32.06% Percent of Set Aside Recommended**
**Amount recommended: \$ 1,495,000**

**Tenant Based Rental Assistance:**

Application Number	Applicant Name	Activity	Region	Units Requested	AMFI targeted				Project \$'s Requested	Score	PJ	Project \$'s Recommended	Units Rec.
					30%	31-50%	51-60%	61-80%					
20010176	NUECES CO MHMR COMMUNITY CTR	TBA	8A	55	52	3			\$ 500,000	274	Y	\$ 500,000	55
20010173*	BLUEBONNET TRAILS COM. MHMR	TBA	8A	55	55				\$ 500,000	246	Y	\$ -	0
20010232	TRI-COUNTY MHMR SERVICES	TBA	06	75	72		3		\$ 477,000	243	N	\$ 477,000	75
20010201	DALLAS AREA NORTHSTAR AUTH.	TBA	03	35	35				\$ 499,895	224	Y	\$ 499,895	35
20010214	LUBBOCK REGIONAL MHMR CENTER	TBA	01	50	50				\$ 480,769	220	Y	\$ 480,769	50
20010079	SABINE VALLEY CENTER	TBA	04	25	23		2		\$ 192,000	219	N	\$ 192,000	25
20010117	TWIN CITY MISSION	TBA	07	45	35	10			\$ 335,700	218	N	\$ 335,700	45
20010229	SPECIAL HEALTH RESOURCES	TBA	04	25	22	2		1	\$ 200,000	214	Y	\$ 200,000	25
20010217	CENTRAL TEXAS MHMR	TBA	02	10	6		4		\$ 103,170	204	N	\$ 103,170	10
20010001	TRAVIS COUNTY HOUSING AUTHORIT	TBA	07	51	51				\$ 500,000	193	Y	\$ 500,000	51
20010195	TROPICAL TEXAS CENTER FOR MHMR	TBA	8B	96	96				\$ 480,000	189	Y	\$ 480,000	96
20010085	ANDREWS CENTER, THE	TBA	04	34	34				\$ 357,168	178	N		
20010199	LIFE MANAGEMENT CTR. FOR MHMR	TBA	10	45	45				\$ 405,000	174	Y		
20010194	HUNT COUNTY MHMR	TBA	03	20	10	10			\$ 491,088	171	N		
20010086	ANDREWS CENTER, THE	TBA	04	24	24				\$ 265,400	166	N		
20010241	LIFETIME INDEPENDENCE FOR EVERYONE	TBA	01	25	19	6			\$ 230,820	146	Y		
20010236	LIFENET COMM. BEHAVIORAL HCARE	TBA	03	30	30				\$ 480,000	142	Y		
20010231	ARLINGTON HOUSING AUTHORITY	TBA	03	44	33	8	3		\$ 500,000	132	Y		
20010190	C.H.A.M.P.	TBA	06	25	15	10			\$ 382,775	112	Y		
20010196	HARRIS COUNTY HOSPITAL DIST.	TBA	06	20	20				\$ 373,800	106	Y		
20010233	ALT AFFORDABLE HSG. SVCS. INC.	TBA	8A	32	23		7	2	\$ 345,600	90	Y		
21	<b>Total Applicants</b>			<b>821</b>	<b>750</b>	<b>49</b>	<b>19</b>	<b>3</b>	<b>\$ 8,100,185</b>			<b>\$ 3,768,534</b>	<b>467</b>
<b>80.81% Percent of Set Aside Recommended</b>								<b>Amount recommended: \$ 3,768,534</b>					

\*Applicant received a recommendation for award in Region 7 under the Tenant Based Rental Assistance Set Aside for \$500,000. \$500,000 award limitation per applicant per activity in accordance with 10 TAC 53.53 (1).

## **REPORT ITEMS**

Executive Directors Report  
SF Bond Report  
State Federal Liaison

**ADJOURN**

*To access this agenda and details on each agenda item in the board book, please visit our website at [www.tdhca.state.tx.us](http://www.tdhca.state.tx.us) or contact the Board Secretary, Delores Groneck, TDHCA, 507 Sabine, Austin, Texas 78701, 512-475-3934 and request the information.*

*Individuals who require auxiliary aids, services or translators for this meeting should contact Gina Esteves, ADA Responsible Employee, at 512-475-3943 or Relay Texas at 1-800-735-2989 at least two days before the meeting so that appropriate arrangements can be made.*